June 4. 79 arg

9 Otto L 389
Oct. 9. 1878.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 213.

HALE, AYER & COMPANY AND THE UNION CAR-SPRING MANUFACTURING COMPANY, INTERVENORS, APPELLANTS,

vs.

CHARLES L. FROST, TRUSTEE, &C.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 10, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 213.

HALE, AYER & COMPANY AND THE UNION CAR SPRING MANUFACTURING COMPANY, INTERVENORS, APPELLANTS.

vs.

CHARLES FROST, TRUSTEE, &C.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Mortgage of Burlington, Cedar Rapids and Minnesota Railway Company	4	1
Intervening petition of Union Car-Spring Manufacturing Company	34	9
Answer of trustees to petition of intervention of Union Car-Spring Manufacturing Company	39	10
Replication of Union Car-Spring Manufacturing Company	43	12
Agreed statement of facts	46	13
General agreed statement of facts as to claims represented by Hubbard vs. Deacon	47	13
Intervening petition of Hale, Ayer & Co	56	16
Answer to petition of Hale, Ayer & Co	83	26
Agreed statement of facts relating to intervening petition of Hale, Ayer & Co	92	29
Certificate of division of opinion	95	30
Appeal bond	99	31
Judgment entry against Union Car-Spring Manufacturing Company	100	32
Judgment entry against Hale, Ayer A Co	102	32
Certificate of clerk	104	33

1, 2, 3 *Bill in equity.*

In the United States circuit court, district of Iowa.

CHARLES L. FROST ET AL., TRUSTEES, &C.,
against
THE B., C. R. AND M. R'Y CO. ET AL.

Be it remembered that on the 19th day of May, 1875, the plaintiff in the above cause filed in the office of the clerk of the United States circuit court for the district of Iowa a bill in equity for the foreclosure of a railway mortgage, and for the appointment of a receiver, of which the following is a copy of the mortgage:

4 This indenture, made on this first day of January, in the year of our Lord one thousand eight hundred and seventy-two, between the Burlington, Cedar Rapids and Minnesota Railway Company, a corporation organized and formed by and under the laws of the State of Iowa, of the first part, and Henry Clews and P. C. Calhoun, of the city of New York, of the second part, witnesseth:

Whereas the party of the first part is authorized by law to borrow any sum or sums of money which may be necessary for the construction, equipment, and maintaining of its railroad, and to mortgage its corporate property and franchises, or convey the same by deed of trust to secure the payment of any debt contracted by the said party of the first part;

And whereas the said party of the first part has, by a resolution of its board of directors, duly authorized its president, treasurer, and
5 secretary to execute in its corporate name and to issue bonds to be designated as first-mortgage bonds, to be secured by a mortgage or deed of trust on the Milwaukee extension of its railroad, in such form and upon such conditions as the said president may deem most desirable for the best interests of the said company of the first part, to aid in securing the necessary means to build and equip the said extension of railroad, to the amount of two millions two hundred thousand dollars;

And whereas the said resolution authorized the said president to designate the trustees, and to incorporate in such deed of trust such terms, conditions, and rate of interest, not exceeding seven per cent. per annum in gold coin, as he might determine;

And whereas the said president has determined to make the issue of bonds, to be secured by a deed of trust, for the sum of two millions two hundred thousand dollars, on said extension of railroad, and to
6 make said bonds payable at the agency of the said railroad company in the city of New York, thirty years from the first day of January, in the year one thousand eight hundred and seventy-two, bearing interest at the rate of seven per centum per annum, payable semi-annually at the agency aforesaid, and also to make both the principal and interest of said bonds payable in United States gold coin, at par, in the city of New York, free from any government tax, or in British sterling money in the city of London, at the option of the holder; and to have said bonds duly prepared and deposited with the said party of the second part, to be delivered over to the treasurer of said railroad company on the order of its president, to be used exclusively in the construction and equipment of said railroad, which said bonds are all for one thousand dollars, and are in the form following, to wit:

Form of bond.

$1,000.] UNITED STATES OF AMERICA, STATE OF IOWA. [£200.

7 Milwaukee Extension Burlington, Cedar Rapids and Minnesota Railway Company.

First mortgage controvertable bonds, interest at 7 per cent. payable in gold semi-annually, free of government tax.

Know all men by these presents that the Burlington, Cedar Rapids and Minnesota Railway Company hereby acknowledges itself to owe Henry Clews and P. C. Calhoun, or bearer, the sum of one thousand dollars in United States gold coin at par, to be paid at the agency of the company in the city of New York, or the sum of two hundred pounds sterling, to be paid at an agency of the said railway company in the city of London, England, at the option of the holder hereof, on the first day of February, 1902, with interest on the said principal from the first day of February, 1872, at the rate of seven per centum per annum in gold coin as aforesaid, free of any United States Government tax, at such agency in the city of New York or in the city of London, on the
8 first days of August and February in each year until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due. This bond is one of a series of twenty-two hundred, numbered from one to twenty-two hundred inclusively, and each for one thousand dollars, amounting in the aggregate to two million two hundred thousand dollars, and all of even date herewith, secured by a deed of trust to the said Henry Clews and P. C. Calhoun, bearing the same date as this bond, and conveying to the said trustees all the railroad of this company in the State of Iowa, situated and located between the city of Cedar Rapids and Postville, in the State of Iowa, and all the other property, rights, and franchises described in the said deed of trust.

It is hereby expressly agreed by the said railroad company, with each and every holder of this bond, that in case of the non-payment of any interest coupon hereto attached, if such default shall con-
9 tinue for six months after maturity and demand of payment, or in case of non-payment of any installment required to be paid into the sinking-fund provided for by the said deed of trust, if such default shall continue for six months after such installment shall have become payable, and then in either case the principal of this bond shall become due in the manner provided in the deed of trust, and the said company hereby expressly waives the benefit of every extension, stay, or appraisement law which has been or may hereafter be enacted.

Any holder of this bond may at any time prior to the first day of February, A. D. 1880, have the same converted into the capital stock of the said company, and be entitled to receive therefor ten shares of said capital stock on the surrender of this bond with all the unpaid coupons thereto annexed.

This bond shall pass by delivery, or by transfer on the books of the company in the city of New York, after a registration of ownership certified hereon by the transfer agent. No transfer except upon the
10 books of the company shall be valid unless the last transfer be to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of the holder.

This bond shall not become obligatory unless the certificate endorsed hereon is signed by the trustees.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed by its president and treasurer and countersigned by its secretary on the first day of January, A. D. 1872.

GEORGE GREENE, *President.*

Countersigned:

JNO. F. ELY, *Treasurer.*

D. W. C. ROWLEY, *Secretary.*

Trustee's certificate.

The undersigned trustees do hereby certify that this is one of
11 a serious of twenty-two hundred bonds referred to in the within mentioned deed of trust.

HENRY CLEWS,
P. C. CALHOUN,
Trustees.

To each of which bonds there is attached sixty interest coupons, numbered respectively from one to sixty, inclusively, in the following form:

$35. £7.

Burlington, Cedar Rapids, and Minnesota Railway Company will pay the bearer, at his option, thirty-five dollars in coin, at its agency in the city of New York, or seven pounds sterling at its agency in London, on August 1st, 1872. Interest on bond No.

JOHN F. ELY, *Treasurer.*

And to each of said bonds there is to be affixed the requisite United States internal revenue stamp.

And whereas the said board of directors passed a resolution in due form authorizing the president, treasurer, and secretary of the
12 said railroad company to execute in its corporate name, and to affix thereto its corporate seal, a deed of trust to the said Henry Clews and P. C. Calhoun to secure the payment of the principal and interest on the said bonds:

Now, therefore, this indenture witnesseth:

That the said party of the first part, in consideration of the premises and of one dollar, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the said bonds as the same shall become due and payable, according to the tenor thereof, and of the coupons thereto annexed, has granted, bargained, and sold, and by these presents doth grant, bargain, sell, release, convey, and confirm unto the said party of the second part, and to their successors as continuing trustee, all that portion of the line of said railroad situated and being in the counties of Linn, Buchanan, Fay-
13 ette, and Alamakee, in the State of Iowa, comprising the Milwaukee extension of company's railroad, including all branches and tracks, and also including all the railroad, rights of way, depot-grounds, coal-lands, and other lands, all depots, station-houses, engine-houses, car-houses, freight-houses, grain-houses, grain-elevators, wood-houses, coal-houses, or other buildings, and all car-shops and machine-shops; also all kinds of machinery and tools now held or hereafter to

be acquired for use in connection with the said extension of railroad, including all locomotives, tenders, cars, or other rolling stock and equipment, and all implements, fuel, and materials for the construction, operating, repairing, or replacing the said railroad or any of its branches, and also all franchises connecting with or relating to the said railroad and which are now held or may hereafter be acquired by the said party of the first part, and also all rights, claims, and benefits in and to all leases, contracts, and agreements now made or which may here-
14 after be made with any parties whomsoever.

Together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estates, rights, titles, and interests whatsoever, as well at law as in equity, of the said party of the first part of, in, and to the same: To have and to hold the above-described premises and property unto the said party of the second part and to their sucsessor or continuing trustee.

In trust, nevertheless, for the purposes herein expressed and upon the following conditions, covenants, and agreements, to wit:

ARTICLE 1. Until default be made in the payment of the principal of the said bonds or some of them, or until default shall be made in respect to something herein required to be done by the party of the first part, the said party of the first part shall possess, manage, operate, and
15 enjoy the said railroad, with the equipments and all the other property and franchises hereinbefore described, and to take and use the earnings, incomes, profits, rents, tolls, and issues thereof, and dispose of the same in any manner not inconsistent with this instrument.

ARTICLE 2. In case default shall be made in the payment of any of the interest coupons annexed to any of the foregoing bonds, according to the tenor thereof, or any payment required to be made into the sinking-fund as herein provided, and if such default shall continue for the period of six months, it shall be lawful for the party of the second part, by its duly-authorized agent, officer, or attorney, to enter into and upon all and singular the premises hereby conveyed and each and every part thereof, and to have, hold, and use the same under such superintendent, manager, receiver, or agents, as the party of the second part may
16 select to conduct the business of said railroad and branches, and to exercise the franchises pertaining thereto, and to make from time to time all repairs, replacements, and additions, and improvements thereto as may seem judicious, and to collect all earnings, dues, freights, incomes, rents, tolls, issues, and profits of the same, and of every part thereof, and after deducting the expenses of operating the said railroad and of conducting the business thereof and of all the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said premises or any part thereof, to apply the money arising as aforesaid to the payment of interest coupons in the order in which they shall have become due, and thereafter to the payment of any installment or balance due and payable to the sinking fund herein established, and after paying all such past-due coupons and all the installments or balances due to the sinking fund, to apply
17 the same to the satisfaction of the principal of the aforesaid bonds which may be at that time unpaid, rateably and without discrimination or preference.

ARTICLE III. In case default shall be made as aforesaid, and shall continue as aforesaid, it shall likewise be lawful for the party of the second part, after entry as aforesaid, or without entry, to sell and dispose of the premises hereby conveyed, at public auction, in the city of

New York, or at such place as the said party of the second part may designate, having first given notice of the place and time of such sale by advertisement, published not less than once a week, for six months, in one or more newspapers published in the cities of New York, Philadelphia, and Cedar Rapids, and to adjourn the said sale from time to time by announcement at time and place advertised without other
18 notice, and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in fee-simple; which sale, made as aforesaid, shall be a perpetual lien, both in law and in equity, against the party of the first part, and all other persons lawfully claiming the same or any part thereof through or from the said party; and after deducting from the proceeds of such sale just allowance for all expenses thereof, including reasonable attorney's fees and any other necessary expenses incurred by the said trustees in managing the business of said railroad while in possession and in arranging the sale thereof, to apply the proceeds to the payment of the principal of such of the aforesaid bonds as may be at the time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably, to the aggregate amount
19 of such unpaid principal and such accrued and unpaid interest in United States gold coin at par; and if, after satisfaction thereof as aforesaid, a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

ARTICLE IV. At any sale of the aforesaid property or any part thereof, whether made under the power herein granted or by judicial authority, the party of the second part may bid for and purchase the property so sold, or any part thereof, in behalf of the holders of the bonds secured by this instrument, and then outstanding, in proportion to the respective interests of such bondholders.

ARTICLE V. In case default shall be made in the payment of any half year's interest on any of the aforesaid bonds, according to the tenor of the coupons annexed thereto, and if such default shall continue
20 for the period of six months after such coupons shall have become due and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds direct in writing before the interest so in arrears has been paid, shall be declared by the said party of the second party to be immediately due and payable, and thereupon the same shall become due and payable, anything contained in the said bond or herein to the contrary notwithstanding.

ARTICLE VI. At the end of every six months, the first such period commencing on the first day of August, 1877, the sum of ten thousand dollars shall be reserved by the said party of the first part, and within sixty days thereafter be paid over to the trustees as a sinking-fund for the redemption of the bonds secured by these presents. The
21 trustees shall at once deposit the said surplus so paid over to them with the United States Trust Company of the city of New York, or in some other depository in said city deemed by them to be safe; and the said moneys, together with all accumulations of interest thereon which may actually come within the disposal of the said trustees, shall be invested by the said trustees in the purchase of the bonds secured by these presents, provided the same can be obtained at a rate not exceeding ten per cent. above the par of the said bonds, with the interest accrued thereon; and the bonds so purchased shall be deposited with the said trust company or other depository deemed by the trustees to be

safe as aforesaid, and be immediately registered, stamped, or endorsed as belonging to the said sinking-fund, but shall remain in force, and the interest thereon shall continue to be paid by the said party of the first part, and the amount of such interest shall be added and applied
22 as a part of the capital of the sinking-fund hereby established, and be invested in the purchase of other bonds in the same manner as the semi-annual payments of ten thousand dollars hereinabove provided for; and preparatory to such purchase of bonds, the said trustees shall give ten days' notice thereof in one or more of the daily newspapers published in the city of New York and Boston, and shall make the said purchase at the lowest price or prices at which the bonds may be offered, pursuant to such notice, or at such lower price as he may be able to obtain the same, but not in any case exceeding the rate of ten per cent. above the par interest of the said bonds; and in case said bonds cannot be purchased at such rate within three months after the expiration of the notice aforesaid, then the said money shall be invested in such a manner as the trustees may deem proper; provided, nevertheless, that it shall be at all times competent for the party of the
23 first part and the holders of the bonds secured hereby, acting by a majority in interest, to enter into any new agreement which they may deem necessary or proper for the modification of the sinking-fund hereby established, or the regulation of investments under the same.

ARTICLE VII. The said party of the first part shall from time to time, and as often as thereunto requested by the trustees, execute, acknowledge, and deliver all such further deeds and conveyances in the law for the better assuring unto the trustees the railroad and equipments, rights, and equities hereinbefore mentioned or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same, or any part thereof in said counties, and all franchises now held or hereafter to be acquired, including the franchises to be a corporation.

24 ARTICLE VIII. The trustees shall have full power in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise to the persons designated by the said company, any lands acquired or held for the purpose of stations, depots, shops, or other buildings, and shall also have power to convey as aforesaid, on like request, any lands or property which in the judgment of the trustees shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid, on like request, any land not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or building connected with the said railroad, and such lands occupied by the track, and adjacent to such station-house, depot, shop, or other building as the said company may deem it expedient to disuse or
25 abandon by reason of such change, and to consent to any such change and to such other changes in the location of the track or depot or other buildings as in their judgment shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company, from time to time, to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of said railroad, as may

have become unfit for such use, replacing the same by new, which shall be conveyed to the trustees, or to be otherwise made subject to the operations of these presents.

ARTICLE IX. The said party of the first part shall at all times
26 hereafter keep at its office or agency, in the city of New York, transfer-books for the transfer of the bonds aforesaid, and of the stock of the said company.

ARTICLE X. It is hereby declared and agreed that it shall be the duty of the trustees to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate proceedings in equity, or in law to enforce the rights of the bondholders under these presents, in writing, as hereinafter specified.

1. If the default be as to interest or principal of any bonds, such requisition upon the said trustees shall be by holders of not less than five hundred thousand dollars in the aggregate amount of the said bonds; and upon such requisition, and a proper indemnification of the persons making the same to the trustee against the costs and expenses to
27 be by them incurred, it shall be the duty of the trustee to enforce the rights of the bondholders under these presents, by entry, sale, or legal proceedings, as they, being advised by counsel learned in the law, shall deem most expedient for the interest of the holders of the said bonds.

2. If the default be in respect to any payment into the sinking-fund herein established by article sixth of these presents, or be in the omission of any act or thing required by article seventh of these presents for the further assuring of the title of the trustee to any property or franchise now possessed, or hereafter acquired, with any other provision herein contained to be performed or kept by the said company, then, and in either of such cases, the requisition shall be as aforesaid; but it shall be within the discretion of the trustee to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared, of a majority in interest of the holders of said bonds by
28 requisition in writing, or by a vote at a meeting duly held, to instruct the said trustees to waive such default, or upon adequate indemnity as aforesaid, to enforce their rights by reason thereof; provided, that no action of the said trustee or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to effect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE XI. It is mutually agreed by and between the parties hereto that the word trustees, as used in these presents, shall be construed to mean the trustee for the time being; and whenever any vacancy may be created, a majority of the bondholders interested shall have the right to appoint a successor, or continuing trustee, and the acceptance of such appointment in writing shall immediately, and by force of such written appointment and acceptance, vest authority in said new trustee as
29 fully and completely in all respects as if he had been herein named as a party of the second part.

ARTICLE XII. The party of the first part in consideration of the premises, and of one dollar duly paid, further covenants and agrees to and with the party of the second part, to keep open an office or agency in the city of New York for the payment of the principal and interest of the bonds hereby secured as the same shall become payable, and for the transfer and registration of such bonds.

ARTICLE XIII. The party of the first part further covenants and agrees that the proceeds of the said bonds shall at all times be faithfully

applied to the uses and purposes herein specified, and to no other use and purpose whatsoever.

ARTICLE XIV. And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the
30 party of the second part, that it, the said party of the first part, shall and will at all times hereafter observe, perform, and keep all and every the conditions, covenants, and provisions herein contained, to be by the said party of the first part performed and kept.

ARTICLE XV. If the party of the first part shall well and truly pay the sums of money herein required to be paid by the said party and all interested thereon, at the times and in the manner herein specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party according to the true intent and meaning of these presents, then, and in that case, the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

31 ARTICLE XVI. It is mutually covenanted by the parties hereto, that the party of the second part shall only be accountable for reasonable diligence in the management of their trust, and shall not be responsible for the acts of any agents appointed by them honestly and in good faith, nor for the acts of each other, and that they shall be entitled to receive, and may deduct from any money in their hands, by reason hereof at any time, all their proper and reasonable costs, charges, and expenses, and proper compensation for any services performed by them in execution of trusts hereby created.

In testimony whereof the party of the first part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president, treasurer, and secretary, and the parties of the second part have hereto subscribed their names to testify their acceptance of the said trust on the day and year first above
32 written.

[L. S.] (Signed) GEORGE GREENE,
President.
(") JOHN F. ELY,
Treasurer.
(") D. W. C. ROWLEY,
Secretary.
P. C. CALHOUN,
HENRY CLEWS,
Trustees.

33 Afterwards and on the same day a receiver was appointed in pursuance of the prayer of said bill and took possession of said railway, and has since operated the same under the orders of this court.

Afterwards, and on the 6th Dec., 1875, the Union Car-Spring Manufacturing Company, by leave of the court, filed its intervening petition in said cause, of which the following is a true copy:

In the circuit court of the United States for the district of Iowa. January adjourned term, 1876. Consolidated causes. In equity.

CHARLES L. FROST, SURVIVING TRUSTEE, &C., and Frederick Taylor
vs.
THE BURLINGTON, CEDAR RAPIDS AND MINnesota Railway Co. et al.

ALEXANDER TAYLOR (SUBSTITUTED FOR Henry Clews) and P. C. Calhoun
vs.
SAME.

AND

GEO. BLISS, FRED. BUTTERFIELD, AND FRANK West,
vs.
SAME.

34 To the honorable judges of the circuit court of the United States for the district of Iowa:

Your petitioner, the Union Car Spring Manufacturing Co., a corporation duly organized and existing under and by virtue of the laws of New Jersey, intervening in the above-entitled cause, respectfully state:

That they sold and delivered to the said defendant, The Burlington, Cedar Rapids and Minnesota Railway Co., a corporation duly organized and existing under and by virtue of the laws of Iowa, goods, wares, and merchandise, as shown by the annexed statement of account, marked "Exhibit A," and made a part hereof at the times therein set forth.

That said goods, wares, and merchandise were so sold and delivered to said railway co., as and for current supplies and repair for their lines of railroad now owned by them and then by them run and operated, and were so used by said railway co., and were necessary and
35 proper for use in the operation of their said road. That the prices charged for said goods, &c., as shown by said statement of account, are the just and reasonable charges therefor; that said account is still the property of your petitioner and is wholly due and unpaid.

That said railway co. is now wholly insolvent, and that its said railroad is now in the hands of and run and operated by Edward F. Winslow, a receiver of this court duly appointed.

Wherefore your petitioner prays that an order be made by this court directing the master of this court to examine said account and ascertain the amount due your petitioner thereon, and requiring the said Winslow, receiver, to pay the same out of the earnings of the said railroad at such time and in such manner as this court shall direct, and for such other and further relief to which they are in equity entitled.

(S'g'd) HUBBARD AND DEACON,
Att'ys for Petitioner.

36 TATE OF ILLINOIS,
Cook County, ss:

I, J. S. Brewer, being duly sworn, on oath say that I am agent for the Union Car-Spring Manufacturing Co., above named; that said goods, &c., as shown by the annexed statement of account, were so sold and

delivered by me as such agent; and that I have full knowledge of the facts in the case; that I have read the foregoing application, and know the contents thereof, and that the statements therein made are true, as I verily believe.

(S'g'd) JOHN S. BREWER,
Ag't Union Car-Spring M'f Co.

Subscribed by the said J. S. Brewer, in my presence and by him sworn to before me on this 15th day of November, A. D. 1875.

[SEAL.] (S'g'd) JUNIUS MULVEY,
Notary Public.

Service of foregoing petition accepted, and copy received, subpœna waived, consent given to filing of said petition, answer to be filed in 90 days.

Signed this 2d day of December, 1875.

(S'g'd) GRANT AND SMITH,
Solicitors for Compl'ts.

37 CHICAGO, *May 1st*, 1875.

Burlington, Cedar Rapids and Minnesota R'y Co. bought of Union Car-Spring Manufacturing Co., of 61 *Liberty street, New York, Nos.* 156 *and* 158 *Lake street. John S. Brewer, agent.*

1875.				
M'ch 24.	24 nest springs, 6+6—3, 563c			
	8 " " 6¼+8—4, 333c			
		896″ 12c	107 52	
Apr. 17.	199 U. B. spirals, 825c 14c		115 50	
" 22.	24 nest springs, 6+6—3—541c 12c		64 92	
" 23.	200 U. B. spirals, 811c 14c		113 54	
" 30.	100 " " " 421c 14c		58 94	
				$460 42

Sent to C. Rapids, care B. W. Bushnell, gen'l M. M.

(Endorsed:) U. S. circuit court dist. of Iowa. Cha's L. Frost et al., trustee, etc., vs. B., C. R. and M. R'y Co. et al. Application of Union Car and Spring Man'f'g Co. for payment of supply acc't. Filed Dec. 6, 1875. George B. Corkhill, clerk.

38 On Dec. 24, the pl'ffs, Frost and others, filed their answer to said petition, of which the following is a true copy:

39 *Ans. to intervening petition of Union Car-Spring Manuf. Co.*

In the circuit court of the United States for the district of Iowa. January adjourned term, 1876. Consolidated causes. In equity.

CHARLES L. FROST, SURVIVING TRUSTEE, &C., and Frederick Taylor,
vs.
THE BURLINGTON, CEDAR RAPIDS AND MINnesota Railway Co. et al.

ALEXANDER TAYLOR, SUBSTITUTED FOR HENRY Clews and P. C. Calhoun,
vs.
B. C. R. AND M. R. R. CO. ET AL.

AND

GEORGE BLISS, FRED BUTTERFIELD, AND FRANK West,
vs.
B., C. R. AND M. R'Y CO. ET AL.

To the honorable judges of the circuit court of the United States for the district of Iowa:

The answer of said Charles L. Frost and others, trustees, to the intervening petition of the Union Car-Spring Manufacturing Company.

40 These defendants admit the sale and delivery to the Burlington, Cedar Rapids and Minnesota Railway Company, the goods, wares, and merchandise as specified in the annexed schedule to said petition of said Car-Spring Manuf. Co., at the times and places mentioned, admit that the prices charged for said goods, &c., were reasonable, that the said account is still the property of said petitioners; that the said claim is still due and wholly unpaid—admit that said Burlington, Cedar Rapids and Minnesota R'y Co. is now wholly insolvent, and now in the possession of and being operated by Edward F. Winslow, a receiver of this court.

And, further answering, these defendants say that they are the trustees of three different mortgages given on the said Burlington, Cedar Rapids and Minnesota Railway Company—one on the main line dated May 1st, 1869, for $5,400,000; one on the Milwaukee division for $2,200,000, dated January 1st, 1872, and one on the Muscatine
41 division, given on the first day of July, 1872, for $800,000. That each of said mortgages recorded before said claims accrued included all the then and future to be acquired property, both real and personal, of said main line and divisions.

That the mortgagors have all become delinquent in the payment of interest from 1st Nov., 1873, and the defendants herein have judgments for both principal and interest under said mortgages; that said debt due said Union Car Manuf. Co. was contracted by said railway co. before the appointed of any receiver of this court, and before the possession was surrendered by said company to the receiver W. W. Walker or Edward F. Winslow.

That said claim of said car co. is junior and inferior to that of the bondholders under said mortgages.

That the income of said property is not sufficient to pay the interest on said mortgage debt, and that in May last, subsequent to the time this claim became due, the property was taken possession of for the benefit of said mortgages, and for the purpose of protecting their line.

42 That the claim of said car co. has no validity as against the defendants herein.

(S'g'd) GRANT & SMITH,
For Trustees.

(Endorsed:) In the circuit court of the U. S., district of Iowa. Frost and Taylor, trustees, vs. B. C. R. and M. R'y Co. et al. Calhoun and

Taylor, trustees, vs. B. C. R. and M. R'y Co. et al., and Bliss, Butterfield, trustees, vs. B. C. R. and M. R'y Co. et al. Answer of trustees to claim of Union Car Spring Manuf. Co. Filed Dec. 24, 1875. George B. Corkhill, clerk. Grant and Smith, for trustees.

43 *General replication.*

And on the same day plaintiff in the intervening petition filed a general replication to said answer.

United States circuit court district of Iowa. Consolidated causes. Jan'y adj'd term, 1876.

CHA'S L. FROST AND FREDERICK TAYLOR, trustees, &c.,
vs.
BURLINGTON, CEDAR RAPIDS, AND MINNESOTA R'y Co. et al.

ALEX. TAYLOR, SUBSTITUTED FOR HENRY Clews and P. C. Calhoun,
vs.
SAME.

AND

GEO. BLISS, FRED. BUTTERFELD, AND FRANK West,
vs.
SAME.

Replication of the Union Car Spring Manufacturing Co. to answer of plaintiffs to their petition for intervention, filed in said cause.

To the honorable judges of said court:

44 These repliants saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said plaintiffs, for replication thereunto, say that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in law to be answered unto by the said plaintiffs, and that the answer of the said plaintiffs is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answered contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in their said bill they have already prayed.

(S'g'd) HUBBARD AND DEACON,
Sol's for Union Car Sp'g Man'f'g Co.

45 (Endorsed:) U. S. circuit court, dist. of Iowa. Cha's L. Frost et al. vs. B. C. R. and M. R'y Co. et al. General replication of Union Car Spring Man'f'g Co. to ans. of pl'ffs, to their pet. for intervention and payment of supply acc't. Filed Dec. 24, 1875. George B. Corkhill, clerk. Hubbard and Deacon, for repliant.

On the 17th April, 1876, the parties filed in this court the following agreed statement of facts:

In United States circuit court, district of Iowa. Consolidated causes. May term, 1876. In equity.

CHA'S L. FROST, SURVIVING TRUSTEE, AND Frederick Taylor
vs.
THE BURLINGTON, CEDAR RAPIDS AND MINnesota Railway Co. et al.

ALEX. TAYLOR, SUBSTITUTED FOR HENRY Clews and P. C. Calhoun,
vs.
SAME.

AND

46 GEORGE BLISS, FREDERICK BUTTERFIELD, and Frank West,
vs.
SAME.

Agreed statement of facts in the matter of the intervening petition of the Union Car-Spring Manufacturing Co. in the above-entitled cause.

The Union Car-Spring Manufacturing Co. sold and delivered to the Burlington, Cedar Rapids and Minnesota Railway Co., during the month of April and the last of March, 1875, and just prior to the appointment of a receiver, goods and merchandise to the amount of $460.42, the same consisting of car spirals and springs, now being used by the receiver of said railway co., which account is still the property of said U. Car-Sp'g Man'f'g Co., is now due and wholly unpaid.

Dated January 29, 1876.

(S'g'd) HUBBARD AND DEACON,
Att'ys for Union Car-Sp'g Man'f'g Co.

(In pencil:) Statement correct.

Signed Apr. 14, 1876, by—

GRANT AND SMITH,
For Trustees.

47 (Endorsed:) U. S. circuit court, dist. of Iowa. Cha's L. Frost et al. vs. B., C. R. and M. R'y Co. et al. Agreed statement of facts in matter of intervening petition of Union Car-Spring Man'f'g Co. Filed Apr. 17th, 1876. E. R. Mason, clerk. Grant and Smith for trustees.

And on the same day was filed the following agreed statement of facts relative to this plaintiffs' claim:

In United States circuit court, district of Iowa. Consolidated causes. May term, 1876. In equity.

CHARLES L. FROST, SURVIVING TRUSTEE, AND Frederick Taylor,
vs.
THE BURLINGTON, CEDAR RAPIDS AND MINNESOTA Railway Co. et al.

ALEX. TAYLOR, SUBSTITUTED FOR HENRY Clews and P. C. Calhoun,
vs.
SAME.

And

48 GEORGE BLISS, FRED. BUTTERFIELD, and Frank West,
vs.
SAME.

It is agreed between the parties and the intervening claimants, represented by Hubbard and Deacon, that the following facts shall be admitted on the trial of all the claims of said intervenors, viz, on the 1st day of Nov., 1873.

1st. The B., C. R. and M. R'y Co. made default in the payment of the interest on the bonds secured by mortgage on the main line and branches of its railway, and at that time owed a floating debt for equipment, construction, repair, wages of men, taxes, &c., of about one million six hundred thousand dollars.

2nd. The bondholders of the several mortgages on said railway and branches consented to and did fund interest-coupons on their bonds for eighteen months, and left the railway in the possession of the company, the mortgagor.

49 3rd. At the end of the eighteen months, to wit, May 1st, 1875, the company again made default in its interest, and on the 19th day of May, 1875, the plaintiffs in the above causes, by proper petitions, caused by this court to take possession of said railway and branches, to appoint a receiver therefor, and since that time, and now, the same have been in the custody of this court.

4th. Between the 1st day of November, 1873, and the first day of May, 1875, the gross earnings of said railway and branches have been about $1,772,249.74 dollars, and the net earnings over and above the current operating expenses, taxes, &c., in that time, were about five hundred and fifty thousand dollars, all of which was disbursed and expended in the payment of the floating indebtedness, past operating expenses, &c., mentioned in the first paragraph hereof.

5th. On the 1st day of November, 1873, the company was in-
50 debted for back wages to employees, taxes, and current supplies then on hand and subsequently used by the company, in the sum of about one hundred fifty thousand dollars.

6th. On the 19th day of May, 1875, the company was indebted for back wages to employees about eighty-one thousand two hundred fifty and $\frac{02}{100}$ dollars, and for current supplies about sixty thousand dollars.

7th. The mortgage on the main line bears date May 1, 1869, and was recorded in the several counties along the line on the following dates,

viz: In Des Moines County, May 25, 1869; Louisa Co., May 26, 1869; Muscatine Co., June 1, 1869; Johnson Co., June 4, 1869; Cedar Co., June 3, 1869; Linn Co., Dec. 25, 1869; Benton Co., May 26, 1869; Blackhawk Co., Oct. 10, 1870; and in Bremer, Butler, Floyd, and Cerro Gordo Counties some time in the latter part of 1869.

51 Prior to the execution and recording of the said mortgage as aforesaid, the said railway was projected and partially surveyed from Burlington to Plymouth, and about $155,000.00 expended in the grading and preparation of the road-bed along different parts of the line.

8th. The mortgage on the Milwaukee extension bears date January 22, 1872, and was recorded in the several counties along the line of said extension on the following dates, viz: Linn, Jan'y 25, 1872; Buchanan, Jan'y 29, 1872; Fayette, Feb'y 1, 1872; Allamakee, Feb'y 1, 1872.

Prior to the execution and recording of the said mortgage last aforesaid, the said Milwaukee extension was projected, partially surveyed from Linn Junction to Postville, and about $14,600.00 expended in the grading and preparation of the road-bed along different parts of the line.

52 9th. The mortgage on the Muscatine division bears date July 1, 1872, and was recorded in the several counties along the line of said division on the following dates, viz: Muscatine, July 1, 1872; Johnson, July 26, 1872; Washington, July, 1872.

Prior to the execution and recording of the mortgage last aforesaid, the said Muscatine division was projected, surveyed, and twenty-five miles thereof graded and tied.

Dated February 2, 1876.

(S'g'd) HUBBARD AND DEACON,
Att'ys for Intervening Claimants.

We agree to all the facts in the foregoing statement, except that portion of sections seven, eight, and nine which specify that the work of grading was commenced prior to the execution and recording of the several mortgages. The time of commencement of work of grading on main line and branches must appear in proof.

Signed April 14, 1876.

(S'g'd) GRANT AND SMITH,
For Trustees and Bondholders.

53 (Endorsed:) U. S. circuit court, dist. of Iowa. Cha's L. Frost et al. vs. B., C. R. and M. R'y Co. et al. Agreed statement of facts as to petitions of intervening claimants represented by Hubbard and Deacon. Filed Apr. 17, 1875. E. R. Mason, clerk. Grant & Smith, Davenport, Iowa, for trustees and bondholders.

54 *Statement of facts.*

In the circuit court of the United States for the district of Iowa. May term, 1876. Consolidated causes. In equity.

FREDERICK TAYLOR (SUCCESSOR TO CHARLES L. FROST), trustee, &c.,
vs.
THE BURLINGTON, CEDAR RAPIDS & MINNESOTA Railway Co. et al.

ALEXANDER TAYLOR, SUBSTITUTED FOR HENRY Clews and P. C. Calhoun, trustees, &c.,
vs.
B. C. R. & M. R'Y CO. ET AL.

GEORGE BLISS, FREDERICK BUTTERFIELD, AND Frank West
vs.
B. C. R. AND M. R'Y CO. ET AL.

We agree that the statement as to time of commencement and amount of work on Burlington, Cedar Rapids and Minnesota Railway Co., as contained in sections 7, 8, & 9 of the general agreement filed in this cause, be taken as true.

(S'g'd) GRANT & SMITH,
For Trustees.

(Endorsed:) U. S. circuit court, district of Iowa. Frederick Taylor, trustee, &c., et al. vs. B. C. R. & M. R'y Co. et al. General agreement of facts as to claims of intervenors represented by Hubbard & Deacon. Filed Apr. 28, 1876. E. R. Mason, clerk. Grant & Smith, for trustees.

55 Afterwards, and on the 7th of June, 1876, the cause upon the intervening petition of the Union Car Spring Manufacturng Company came on for hearing upon the pleadings, the foregoing agreed facts, together with the further fact, shown by the records of this court, that the net earnings of the railway during eight and one-third months under the receiver were 337,540.35 dollars over and above the or-
56 dinary operating expenses during that time; and on the 18th day of August, A. D. 1875, Hale, Ayer & Co. filed their petition in said cause, asking for an order on said receiver to pay their claims for supplies, which said petition is in words and figures following, to wit:

Application for an order for the payment of supply account.

In the circuit court of the United States for the district of Iowa.

SAMUEL HALE, JOHN V. AYER, HERBERT C. Ayer, Geo. W. Hale, and Cha's B. Hale, late partners under the firm-name and style of Hale, Ayer and Co.,
ag't
EDWARD F. WINSLOW, RECEIVER OF THE BURlington, Cedar Rapids and Minnesota Railway Company. } In vacation.

To Hon. J. M. Love, one of the judges of the United States circuit court:

57 The above-named plaintiff respectfully states that during the year 1873, and for a long time prior thereto, they were partners under the firm-name and style of Hale, Ayer & Co., at Chicago, Illinois, and engaged in business as railroad supply and bar iron and steel merchants.

During the year 1873, and prior thereto, the Burlington, Cedar Rapids and Minnesota Railway Company was a corporation duly organized and existing under and by virtue of the laws of Iowa, and owned and operated

about three hundred and fifty miles of railroad in said State. Between the first day of March and the first day of August, 1873, these plaintiffs sold and delivered to the said B. C. R. and M. R'y Company iron, steel, nuts, bolts, splices, and other material and supplies for the repair and operation of its said railroad, and equipments, &c., of the value of 20,866.24 dollars an itemised copy of the account of which is hereto attached and made a part hereof, marked "Exhibit A."

58 On the said first day of August, 1873, an accounting was had between these plaintiffs and said railway company, and there was found due plaintiff for said goods so sold and delivered the said sum of 20,866.24 dollars, together with 875.43 dollars agreed interest thereon, for which the said railway company made, executed, and delivered to these plaintiffs their fourteen several promissory notes for the sum of 1,552.78 dollars each; seven of which were dated August 1 and seven dated August 10, 1873, and each due in three, four, five, six, seven, eight, and nine months from date, with interest. The said railway company has paid these plaintiffs the sum of 12,295.74, being in full of the principal and interest of the four of said notes dated August first, 1873, and due in three, six, seven, and eight months from date; and three of the notes dated August 10, 1873, and due in three, four, and five months from date; principal paid 10,869.46 doll's; interest paid 1,426.29 doll's.

59 On the 20th day of January, 1874, the said railway company renewed the two notes dated August 1, 1873, due in four and five months from date by three notes dated Jan. 20, 1874, one for 1,075.44 dollars, due June 10, 1874, one for $1,077.74, due June 20, 1874, and one for 1,078.88 dollars, due June 25, 1874, and each with interest. These plaintiffs now hold and own the following notes given for said account and for renewals of the same, namely:

One note due 13th Aug't, 1874	1,161 03
One note due 28th July, 1874	1,157 11
One note due 23d July, 1874	1,155 87
One note due 13th July, 1874	1,153 42
One note due 13th June, 1874	1,075 44
One note due 23d June, 1874	1,077 74
One note due 28th June, 1874	1,078 88
One note due 23d Aug't, 1874	1,163 48
One note due 28th Aug't, 1874	1,164 72
One note due 16th Aug't, 1874	1,552 78
One note due 13th Mar., 1874	1,552 78
One note due 13th May, 1874	1,552 78
One note due 13th Apr., 1874	1,552 78
One note due 4th May, 1874	1,552 78

60 and which are wholly due and unpaid.

Between the first day of August and the 25th day of December 1873, these plaintiffs sold and delivered to the said railway company certain other iron, steel, bolts, splices, nuts, and other material and supplies for the operation and repair of its said railroad, of the value of *the value of* 6,631.74 dollars, a copy of the itemised account of which is hereto attached and made part hereof, marked "Exhibit B."

Afterwards, and on the 20th January, 1874, an accounting was had between plaintiffs and said railway company for said goods so sold and delivered, and the said sum of 6,631.74 dollars was found due plaintiffs therefor, together with 323.89 dollars interest thereon, and the said railway company then executed and delivered to plaintiffs therefor its six several promissory notes, as follows:

61	One note due July 10, 1874	$1,153 42
	One note due July 20th, 1874	1,155 87
One note due	" 25th, "	1,157 11
One note due Aug.	10th, "	1,161 03
One note due "	20th, "	1,163 48
One note due "	25th, "	1,164 72
	Total	$6,955 63

Each of said notes are now held and owned by these plaintiffs, and each is wholly due and unpaid.

Afterwards, and on the 15th day of May, 1874, the said accounts and notes above mentioned, then and now remaining due and unpaid, the said railway company agreed in writing to pay these plaintiffs interest on all notes then remaining due and unpaid at the rate of eight per centum per annum, a copy of which agreement is hereto attached and made a part hereof, marked D.

Wherefore plaintiffs say they are entitled to recover and receive from said railway company the amount of said notes now remaining
62 due and unpaid as above stated, together with eight per cent. interest thereon, from the respective dates of said several notes till paid.

Pl'ffs further state that the said Burlington, Cedar Rapids and Minnesota Railway Company is wholly insolvent, and that on the 15th day of July, 1875, the said Edward F. Winslow was appointed receiver of said railroad, and he is now in possession of the same by virtue of an order of this court; that these plaintiffs have no security for the debt herein mentioned, except the twenty bonds mentioned in Exhibit D, which are of the value of about two thousand dollars only, as they are informed and believe. Plaintiffs further state that at the time the goods hereinabove mentioned were sold and delivered to said railway company the said company was engaged in the construction and operation of a branch of its said railway, known as the Milwaukee Ex-
63 tension, a distance of about 96 miles, between a point near Cedar Rapids and Postville, in the State of Iowa, and the same has since been completed, and is now in the possession and operated by the said Winslow as receiver of this court, and plaintiffs are informed and believe that a portion of the goods sold and delivered as aforesaid were used in the original construction of said Milwaukee Extension, but what portion plaintiffs have no knowledge or information sufficient to form a belief. But plaintiffs aver that they sold no part of said goods as or for constructive material, but only as and for current railroad supply, material for repairs, &c.

Plaintiffs therefore pray that an account may be taken of the amount due them from said railway company, and that your honor make an order directed to the said Edward F. Winslow, esqr., receiver of said railway company, requiring him to pay these plaintiffs the sum
64 found due them at such times as funds may be on hand for the payment of such claims in accordance with the order of this court, dated July 15, 1875, or such portion thereof as your honor may deem just and expedient, and that execution issue to secure the same, with costs; also that your honor designate what notice shall be given to said receiver of the hearing of this petition.

(S'g'd) HUBBARD AND DEACON,
Att'ys for Pl'ff.

STATE OF ILLINOIS,
Cook County, ss:

I, Herbert C. Ayer, being duly sworn, on oath say that I am one of the plaintiffs in the foregoing application; that I have read the same and know the contents thereof, and that the matters and facts therein stated are true as I verily believe.

(S'g'd) H. C. AYER.

Subscribed and sworn to before me and in my presence by Herbert C. Ayer this 5th day of May, 1875.

Witness my hand and notarial seal the day and year last written.

[SEAL.] (S'g'd) PHILIP A. HOYNE,
Notary Public for Cook County, Ill's, and Commissioner for Iowa.

65 EXHIBIT A.

Burlington, Cedar Rapids and Minn. R'y Co., bought of Hale, Ayer and Co., iron warehouse, Nos. 74, 76, and 78 Mich. ave., cor. Lake S't.

[Terms, cash. Manufacturers, importers, and dealers in iron, steel, nails, spikes, nuts, washers, &c.]

1873.		R. W. Bushnell:		
M'ch	1.	10 bars $\frac{3}{4}$ × $\frac{1}{4}$ chrome sp'g steel } 1,146,13		148 89
		10 " $3\frac{1}{2}$ × $\frac{1}{4}$ " " }		
	3.	1 " $2\frac{1}{4}$ sq. iron, 293, 4.80	14 06	
		10 plates $\frac{1}{4}$ × 12 × 18" × 48, 533, $6\frac{3}{4}$	35 98	
				50 04
	7.	10 b'dl's $\frac{1}{2}$ r'd iron, 1,286, 4.70	60 44	
		2 bars 2 × $\frac{1}{4}$ chrome c. steel, grade A } 138, 20	27 60	
		2 " $1\frac{1}{2}$ × $\frac{1}{4}$ " " " " " }		
		1 keg $\frac{5}{8}$ hex. nuts, 200, $12\frac{1}{2}$	25 00	
		1 bdl. $\frac{1}{2}$ h'f r'd iron, 130, 6.60	8 58	
		1 keg borax, $56\frac{1}{2}$, 36	20 34	
				141 96
	8.	10 " $3\frac{1}{2}$ × $\frac{1}{2}$ bolts, 2,000, $6\frac{1}{2}$		127 50
	13.	Ja's Cantelo:		
		5 bars 6 × $\frac{1}{4}$ iron, 16, 746, 4.70		35 06
	14.	400 f't 2" gas-pipe, 85 c	340 00	
		Dis. 35%	119 00	
			221 00	
		50, 2" threads, 15	7 50	
				228 50
66		R. W. Bushnell:		
		6 sheets 10 × 36 × 120 iron, 1,067, $6\frac{1}{2}$	66 69	
		1 keg $1\frac{1}{2}$ × $\frac{5}{8}$ rivits, 100, 13	13 00	
		1 p'c's $\frac{1}{4}$ chain, 200, $9\frac{1}{2}$	19 00	
		10 bars $1\frac{1}{2}$ × $\frac{1}{2}$ iron, 377, $4\frac{1}{2}$	16 97	
		20 " $\frac{1}{2}$ r'd " 597, 4.70	28 06	
		2 kegs $\frac{1}{2}$ sq. nuts, 400, 8	32 00	
		2 " $\frac{3}{4}$ " " 400, $7\frac{1}{2}$	30 00	
		2 " $\frac{3}{4}$ " " 400 "	30 00	
		1 " $\frac{1}{2}$ hex. " 200, $13\frac{1}{2}$	27 00	
		1 bar $2\frac{1}{2}$ × $\frac{1}{4}$ chrome steel, $\frac{1}{2}$3—17, 18	3 06	
				265 78
	15.	2 " }		
		1b'd'l } $\frac{1}{2}$ r'd Lowmoor, 140, 13	18 20	
		W. H. Pettibone:		
		4 bars }		
		1 bdl. } $\frac{1}{2}$ r'd Lowmoor, 166, 13	21 58	
				39 78
	18.	4 bars $1\frac{1}{2}$ sq. Eng. c. steel, 309, 20		61 80
		R. W. Bushnell, forward		1,099 40
1873.				
M'ch	18.	Forward		1,099 40
		R. W. Bushnell:		
	19.	10 bars 2 × $\frac{1}{2}$ iron } 1,526, $4\frac{1}{2}$	63 67	
		10 " 3 × $\frac{1}{2}$ " }		
		1 b'd'l $1\frac{1}{2}$ × $\frac{1}{2}$ " 109, $5\frac{1}{2}$	6 00	
		1 " $1\frac{1}{2}$ × $\frac{1}{2}$ " 130, 5.20	6 76	
		1 " $\frac{1}{2}$ h'f r'd " 114, 8.10	9 23	
				90 66

EXHIBIT A—Continued.

	20.	6 sheets 16 × 30 × 108 iron } 854,6			51 24
		6 " 14 × 30 × 108 " }			
	22.	50 bars 1½ sq. " }			
		30 " 1¼ " } 5,804, 4½		261 18	
		10 " 3 × 1 " }			
		5 " ⅞ oct. Eng. c. steel }			
		5 " ¾ " " " " } 193, 20		38 60	
					299 78
67	26.	50 " ⅞ r'd iron } 3,349, 4.70			157 40
		15 b'dl's ¾ " " }			
	29.	15 bars 3½ × ¾ chrome sp'g steel, 968, 12			116 16
Ap'l	7.	1 b'd'l 1 h'f r'd iron, 140, 5.40		7 56	
		30 bars ⅞ r'd Lowmoor iron } 1,000, 13		130 00	
		2 b'd'ls ½ " " " " }			
		2 kegs 2½ × ⅝ rivits, 200, 8		16 00	
		2 " 20d. nails, 5½		10 50	
		2 " 10d. " "		10 50	
		3 " 8d. " 5½		10 50	
		1 " 60d. "		5 25	
		1 " 4d. "		6 00	
		1 bar 1½ sq. Eng. c. steel, 56, 22		12 32	
		1 " 9/16 " " " " 8½ "		1 87	
					211 00
	10.	6 sheets 14 × 26 × 120 iron, 460, 6			27 60
	14.	1 bar 3 r'd shafting, 346, 5 7/16		18 34	
		30 " 1 " iron } 1,717, 4½		77 26	
		10 " 2 × ¾ " }			
		Forward		95 60	2,053 24
1873.					
Ap'l	14.	Am't bro't forward		95 60	2,053 24
		10 b'd'ls ⅞ r'd iron, 1,110, 4.90		54 39	
		15 " ¾ " " 1,941, 4.70		91 23	
					241 22
	22.	10 bars 3 × 1 " 1,277, 4½		57 47	
		10 " 3½ × ¾ chrome sp'g steel, 590, 13		76 70	
		1 " 1½ sq. Eng. c. " " } 76, 20		15 20	
		3 " ½ " " " " }			
		3 p. w. vises, 369, 16		59 04	
		1 keg ¾ washers, 150, 9		15 00	
		1 scroll-saw blade ⅛ × 18, 25		25	
		1 " " ¼ × 18, 25		25	
					222 41
	25.	6 bars 6 × 1 iron, 1,664, 4.70			78 21
68	26.	2 kegs 5¼ × 1½ rivits, 200, 8		16 00	
		2 lengths 1¼ dia. iron pipe, 30' 2", 1.28, 38.61; dis. 40%, 15.44		23 17	
					39 17
	29.	2 bars ½ oct. Eng. c. steel, 12, 20		2 40	
		10 " 1½ r'd iron } 2,858, 4½		128 61	
		30 " 1¼ " " }			
		20 " 3½ × ¾ chrome sp'g steel, 1,191, 13		154 83	
		1 keg ½ × ½ rivits, 200, 15		30 00	
		1 " 1½ × ⅝ " 200, 13		26 00	
		30 bars ⅛ r'd iron, 808, 4.70		37 98	
		50 lbs. borax, 35		17 50	
		6 sheets 14 × 26 × 120 iron, 437, 6		26 22	
					423 54
	30.	1 keg 6 × 1½ rivits, 100, 8			8 00
May	16.	2 bars 4 × 1¼ iron 644, 5 5/13			34 13
	17.	1 " 1½ sq. Eng. c. steel } 172, 20		34 40	
	"	1 " 2 " " " }			
		4 " 1¼ " " " } 307, 20		61 40	
		1 " 1½ " " " }			
		1 " 4 × 2 B. B. iron, 461, 6.30		29 04	
		6 " 1½ sq. " 600, 4.30		25 80	
		15 " 3½ × ¾ chrome sp'g steel, 846, 13		109 98	
		1 keg 1 sq. nuts, 200, 7		14 00	
					274 62
		Forward			3,374 54
1873.					
May	17.	Am't bro't forward			3,374 54
	20.	R. W. Bushnell:			
		6 sheets 10.36, 120 flange, 1,039, 10		103 90	
		6 " 14.36, 120 iron, 678, 6		40 68	
		1 keg 1½ × ½ rivits, 100, 8		8 00	
		1 " 1¼ × ½ " 200, 13		26 00	
		½ d'z eng'rs' hammers (2f), 22		11 00	
		1 keg 5½ × 1½ rivits, 100, 8		8 00	
69		1 keg 5½ 1½ rivits, 100, 8		8 00	
		1 " 2½ " " 100, 8		8 00	
					213 58
	23.	Pottsville, Iowa:			
		150 kegs 7/16 r. r. spikes, 22,500, 5			1,125 00
	24.	150 " " " " 22,500, 5		1,125 00	

EXHIBIT A—Continued.

		R. W. Bushnell:			
		1 bar 1¼ sq. Am. c. steel, 74, 18			1,138 32
	28.	6 " 2 × ⅜ iron 10 " 2½ × ½ " } 1,905, 4.30		81 91	
		6 " 3 × 1 " 10 " 3 × ½ cast sp'g steel 20 " 3¼ × ⅝ " " " } 1,809, 13		235 17	317 08
June	2.	1 keg ½ washers, 150, 9		13 50	
		1 " ¾ sq. nuts, 200, 7		14 00	27 50
	4.	Postville:			
		300 keg 5½ × $\frac{5}{16}$ r. r. spikes, 45,000, 5			2,250 00
	7.	R. W. Bushnell:			
		6 sheets 10.36. 120 iron, 987, 6		59 22	
		1 b'd'l ⅜ r'd " 134, 5		6 70	
		50 bars ½ " " 1,336, 4.40		58 78	
		2 " 1½ × ⅝ Eng. c. steel, 49, 22		10 78	
		1 " 1½ × ½ " " " 35½, 22		7 81	143 29
	9.	Postville:			
		150 kegs 5½ × $\frac{5}{16}$ r. r. spikes, 22,500, 5			1,125 00
		Forward			9,714 31
1873.					
June	9.	Am't bro't forward			9,714 31
	14.	R. W. Bushnell:			
		8 bars 3½ × 1 iron 8 " 3½ × ⅜ " 6 " 3½ × ½ " 8 " 1¼ r'd " 70 10 " 1¼ " " 20 " 1 " " 15 " 2 × ¾ " 5 " 1½ × ⅝ " } 6,180, 4		247 20	
		5 b'd'ls ½ r'd " 526, 4.40		23 14	
		1 sheet ½. 32.120 ex. flange, 407, 10		40 70	
		1 " ½. 30.108, iron, 248, 6		14 88	
		1 keg ¾ × ½ rivits, 200, 12½		25 00	
		1 " ⅝ × ½ " 200, "		25 00	
		1 " 2 × ½ " 100, 7.75		7 75	
		2 " ½ sq. nuts, 400, 6½		26 00	
		2 " ½ " " 400		26 00	
		1 screw-box 1½, net		2 25	437 92
	17.	Jno. Cantelo:			
		8 b'd'l's 4 × ½ iron, 6 " 4½ × ½ " } 2,406, 5		120 30	
		Postville:			
		2,280 splices, 21,200, 4½		901 00	
		1,855 " 17,105, "		726 96	
		20 kegs 3½ × ½ bolts, 4,000, 6		240 00	
		2,335 splices, 21,205, 4½		905 46	
		Cedar Rapids:			
		2,280 splices, 21,278, 4½		904 31	
		1,180 " 11,095, "		471 54	
		50 kegs 3½ × ½ bolts, 10,000, 6		600 00	
		2,255 splices, 21,310, 4½		905 58	
		1,920 " 18,066, "		767 80	
		10 kegs 3½ × ½ bolts, 2,000, 6		120 00	6,663 05
		Forward			16,815 28
71	1873.				
June	17.	Am't bro't forward			16,815 28
	19.	Postville:			
		1,266 splices, 11,880, 4½			304 90
	23.	R. W. Bushnell:			
		5 bars 1 r'd Lowmoor 4 " 1¼ " } 435, 13		56 55	
		6 " 6 × 1 iron, 1,736, 4.20		72 91	
		10 b'd'l's ¾ r'd " 1,574, "		66 11	195 57
	24.	1 sheet $\frac{1}{16}$ × 34 × 50 homogeneous steel, 154, 13			20 02
	26.	Postville:			
		25 kegs 3½ × ½ bolts, 5,000, 6			300 00
	28.	36 " " " " 5,400, 6			324 00
July	7.	R. W. Bushnell:			
		1 b'd'l 1 × ¼ h'f iron, 107, 5½		5 89	
		10 " ½ r'd " 1,576, 4.20		66 19	
		10 bars 3 × 1 " 1,188, 4		47 52	
		6 sheets 10 × 30 × 108 h'f iron, 703, 6		42 18	
		1 keg 1¼ × ⅛ rivits, 100, 7½		7 75	
		1 " ⅝ × ½ " 200, 15		30 00	199 53

EXHIBIT A—Continued.

	11.	11 plates ½ × 16 × 54 iron, 1,245, 6		74 70
	12.	1 " " × " × " " 116, 6		6 96
	15.	10 bars 2½ × ½ iron, 5 " 1½ r'd " 10 " 1½ " " } 2,113, 3½	79 24	
		5 b'dl's ½ " " 1 " ½ sq. " } 912, 4.15	37 85	
		1 " ½ " " 142, 4.45	6 32	
		1 " ½ h'f r'd " 129, 7.35	9 48	
		1 " ½ " " " 134, 5.85	7 84	
		3 bars ½ sq. Naylor's c. steel 5 " ½ oct. " " " 5 " ¾ " " " } 110, 22	24 20	
		Forward	164 93	18, 440 96
72	1873.			
July	15.	Am't bro't forward	164 93	18, 440 96
		5 bars ½ oct. Naylor c steel, 29, 22	6 38	
		1 keg 2½ × ½ rivits, 150, 15	22 50	
		6 sheets 16 × 30 × 108 iron, 308, 5½	22 88	216 69
	16.	Pottsville:		
		35 kegs 3½ × ¾ bolts 7,000, 6		420 00
	18.	R. W. Bushnell:		
		1 keg ¾ sq. nut, 200, 6½	12 50	
		1 " ½ " " 200, 6½	13 50	
		1 " ¾ hex. " 200, 12½	24 50	
		1 " ½ " " 200 "	24 50	
		1 " 1½ sq. " 201, 7½	15 58	90 58
	21.	1 b'dl ¾ r'd iron, 1 " ¾ sq. " } 276, 4.35	12 56	
		5 bars 1¾ × ½ " 10 " 3½ × ½ " } 1,593, 3.75	59 74	72 30
	23.	8 " ⅞ r'd Lowmoor iron, 1 bd'l ⅞ " " " " } 308, 11		33 88
	28.	Pottsville:		
		21 keg 3½ × ¾ bolts, 3,150, 5½		181 13
	29.	71 " " × " " 10,756, 6	645 36	
		Cedar Rapids:		
		44 kegs 3½ × ¾ bolts, 6,685, 6	401 10	
		R. W. Bushnell:		
		1 b'dl ½ r'd iron, 114, 5.35	6 10	
		5 " ½ " " 615, 4.45	27 37	
		10 " ½ " " 1,290, 3.95	50 95	
		25 bars ½ " " 200 " " " " 10 " 1 " " 5 " 2½ " " 5 " 3½ × ¾ " } 5,858, 3.95	231 39	
		818, 3½	30 68	
		Forward	1, 392 95	19, 455 54
73	1873.			
July	29.	Am'ts bro't forward	1, 392 95	19, 455 54
		1 box borax, 50, 30	15 00	1, 407 95
				20, 863 49
		8 mo's interest on 3, 065 79 @ 8%	163 52	
		6 " " " 17, 797 70 " 8	711 91	875 43
		20, 863 49		$21, 738 92

Settled by notes as follows:

Aug.	1 @ 3 m'os	1, 552 78	
"	" " 4 "	1, 552 78	
"	" " 5	1, 552 78	
"	" " 6	1, 552 78	
"	" " 7	1, 552 78	
"	" " 8	1, 552 78	
"	" " 9	1, 552 78	
10	" " 3	1, 552 78	
"	" " 4	1, 552 78	
"	" " 5	1, 552 78	
"	" " 6	1, 552 78	
"	" " 7	1, 552 78	
"	" " 8	1, 552 78	
"	" " 9	1, 552 78	21, 738 92

1873.

Aug.	4.	R. W. Bushnell:		
		3 kegs $\frac{7}{8}$ sq. nuts, 600, 6½	37 50	
		4 bars $\frac{7}{8}$ r'd Lowmoor, 92, 12	11 04	48 54
	6.	2 kegs $2\frac{1}{2} \times \frac{1}{2}$ rivits, 200, 7½		15 50
	8.	12 bars $2 \times \frac{7}{8}$ iron, } 985, 3.75	36 94	
		2 b'dls $1\frac{1}{2} \times \frac{3}{4}$ " }		
		6 " $\frac{3}{4}$ r'd " 828, 4.15	34 36	
		10 " $\frac{3}{4}$ " " 1,289, 3.95	50 92	
		15 bars 1 " Lowmoor iron, 555, 12	66 60	188 82
	9.	1 keg $\frac{1}{2}$ sq. nuts, 200, 6½	13 50	
		2 " $\frac{1}{2}$ " " 400, 6½	25 00	38 50
	11.	1 b'dl $\frac{3}{4}$ r'd Lowmoor iron, 72, 12		8 64
	12.	150 bars $1\frac{1}{2}$ sq. iron, 26 " 1,400, 3.75		52 50
	14.	8 " $3 \times \frac{1}{2}$ " }		
		5 " $2\frac{1}{2} \times$ " "		
		5 " $2\frac{1}{2} \times \frac{1}{2}$ " } 1,735, 3.75	65 06	
		5 " $2\frac{1}{2} \times \frac{3}{8}$ "		
		12 " $1\frac{1}{2} \times \frac{1}{2}$ "		
		2 " $1\frac{1}{4}$ sq. c steel Eng. }		
		2 " $1\frac{1}{4}$ " " " } 276, 22	60 72	
		2 " $\frac{7}{8}$ oct. " " }		
		2 b'dls $1\frac{1}{2} \times \frac{1}{2}$ iron, 254, 4.45	11 30	137 08
	22.	1 keg $\frac{7}{8}$ washers, 150, 7½	11 25	
		1 " $\frac{1}{2}$ " 150, 8½	12 75	
		1 " $\frac{5}{8}$ " 150, 9½	14 25	
		1 b'dl $1\frac{1}{2} \times \frac{1}{4}$ iron, 114, 4.45	5 07	43 32
	25.	25 bars 1 r'd " }		
		15 " $1\frac{1}{2}$ " " }		
		15 " $1\frac{1}{4}$ " " }		
		25 " $1\frac{3}{8}$ " " } 6,675, 3½	250 31	
		10 " $1\frac{1}{2}$ " " }		
		6 " $1\frac{1}{2}$ sq. " }		
		6 " $3\frac{1}{2} \times 1$ " }		
75		1 keg $2\frac{1}{2} \times \frac{1}{2}$ rivits, 100, 7½	7 75	
		Forward		258 06
1873.				
Aug.	25.	Am't bro't forward		790 96
	26.	R. W. Bushnell:		790 96
		2 b'dl's $\frac{7}{8}$ r'd iron, 244, 4.55	11 10	
		1 sheet $8 \times 26 \times 108$ " } 377, 5.75	21 68	
		1 " $\frac{5}{16} \times 36 \times 120$ " }		
		2 bars $1\frac{1}{4}$ angle " }		
		2 " $1\frac{1}{4}$ " " } 422, 7	29 54	
		2 " 2 " " }		
		2 " $2\frac{1}{2} \times \frac{3}{16}$ chrome sp'g steel, 21, 18	3 78	66 10
	30.	1 box $\frac{1}{2}$ sq. nuts, 200, 12½	25 00	
		1 keg $\frac{1}{2}$ " " 200, 6½	13 50	
		1 " $\frac{5}{8}$ " " 200, 6½	12 50	
		1 " $\frac{1}{2}$ hex. " 245, 11½	28 79	
		1 " $\frac{5}{8}$ " " 200, "	23 50	
		1 " $\frac{3}{4}$ " " 200, 11½	22 50	125 79
Sept.	1.	6 sheets $10 \times 36 \times 120$ iron, 899, 5½	51 69	
		12 " $\frac{1}{2} \times 16 \times 54$ " 1,445, "	83 09	
	3.	1 " $8 \times 26 \times 108$ " 133, "	134 78	7 65
	4.	2 " $\frac{5}{16} \times 28\frac{1}{2} \times 53\frac{1}{2}$ homo. steel, 275, 13		35 75
	6.	Ja's Cantelo:		
		4 b'dl's $3 \times \frac{1}{4}$ iron, } 1,550, 4.60	71 30	
		5 " $4\frac{1}{2} \times \frac{1}{4}$ " " }		
		W'm Greene:		
		150 kegs $\frac{7}{16}$ r. r. spikes, 22,500, 4½	1,068 75	
		R. W. Bushnell:		
		10 b'dl's $\frac{1}{2}$ r'd iron, 1,264, 3.80	48 03	
		5 " $\frac{1}{2}$ " " 645, 4	25 80	
		30 bars $1\frac{1}{4}$ sq. " }		
76		20 " $2 \times \frac{1}{2}$ " " }		
		10 " $2 \times \frac{1}{2}$ " " } 4,536, 3.60	166 90	
		10 " $22 \times \frac{1}{4}$ " " }		
		10 " $2\frac{1}{2} \times \frac{1}{2}$ " " }		
		1 keg 1 hex. nuts, 200, 11½	22 30	1,403 28
		Forward		2,564 31
1873.				
Sept.	6.	Am't bro't forward		2,564 31

EXHIBIT D—Continued.

	12.	R. W. Bushnell:			
		30 bars ¾ r'd iron, 820, 3.80			31 16
	19.	6 " 6×1 " 1,668, 3.80		63 38	
		6 " 2×¼ " 273, 3.60		9 83	
		15 b'd'l's ⅝ r'd " 1,982, 3.80		75 32	
					158 53
	22.	2 kegs ⅜ sq. nuts, 400, 6½		25 00	
		2 " ⅜ " " 400, "		25 00	
		2 " ⅜ hex. " 400, 11½		47 00	
		2 bars 2½×⅛ c. sp'g steel, 59, 11		6 49	
		1 " 1⅛ sq. Naylor " } 230, 22		50 60	
		2 " 1¼ " " " }			
		10 " 3½×⅜ iron, 545, 3.60		19 62	
		6 " 3½×½ " 293, "		10 55	
					184 26
	26.	1 keg 1⅜×11/16 rivits, 100, 7½		7 75	
		1 " 5½×" " 100, "		7 75	
					15 50
	30.	3 bars 4×1 iron, }			
		10 " 3×1 " } 3,115, 3.60		112 14	
		6 " 1½ r'd " }			
		6 " 1¼ " " }			
		1 b'd'l 1×¼ " }			
		1 " 1½×¼ " } 223, 4.60		10 36	
		1 " 1½×¼ " }			
		1 " 2×¼ " } 237, 4.30		10 19	
		3 bars 2 r'd " 420, 3.90		16 38	
77		1 b'd'l 1×½ h'f " 102, 5½		5 61	
		6 bars 1½ h'f r'd " 185, 4.50		8 23	
					162 91
Octo.	4.	30 " 1¼ r'd " 2,238, 360		80 57	
		1 " 3×1½ Naylor's Eng. c. steel, } 127, 22		27 94	
		1 " 1⅛×⅝ " " " " " }			
		2 " ⅛ oct. " " " " 39, "		8 58	
					117 09
		Forward			3,223 76
	1873.				
Oct.	4.	A'm't bro't forward			3,223 76
	7.	R. W. Bushnell:			
		10 bars 3½×⅜ c. sp'g steel, } 1,682, 11½		193 43	
		10 " ⅜ r'd Lowmoor, 241, 12		28 92	
		30 " ⅞ " iron, 830, 3.80		31 54	
		2 b'd'ls ⅜ " " 221, 4.40		9 77	
		10 bars 2×⅜ " 605, 3.60		21 78	
		1 " 3½×1⅛ B. B. " 248, 4.75		11 78	
					297 22
	8.	1 keg 1×⅜ rivits, 200 } 400, 13			52 00
		1 " 1¼×" " 200 }			
	15.	2 " ⅜ sq. nuts, 400, 6½		25 00	
		3 " ⅜ " " 600, "		37 50	
		3 " ⅜ " " 600, 6½		40 50	
		1 " ⅜ hex. " 217, 11½		25 50	
		1 " ⅜ " " 200, "		23 50	
		1 " ⅜ " " 200, 13½		26 50	
		1 h'f bbl emery flour, 219, 6		13 14	
		1 box ⅛80 ground emery } 20, 12		2 40	
		⅛90 " " }			
		10 bars 1¼ r'd iron, } 2,675, 3.60		96 30	
		15 " 1½ " " " }			
					290 34
	17.	2 b'd'ls ⅜ " " 261, 3.80		9 92	
		2 " ⅜ " " 298, 4		11 92	
78		1 " ⅜ " " 37, 4.30		1 59	
		3 bars 2½×⅝ " }			
		15 " "×½ " }			
		10 " "×⅜ " } 3,320, 3.60		119 52	
		10 " 2½×⅜ " }			
		10 " 2 ×⅜ " }			
		5 " ⅝ r'd Lowmoor, } 547, 12		65 64	
		7 " 1⅛ sq. " }			
					208 59
		Forward			4,071 91
	1873.				
Oct.	17.	Am't bro't forward			4,071 91
	21.	R. W. Bushnell:			
		33 bars 1½ sq. iron, 1,821, 3.60			
	22.	10 b'd'ls ⅜ r'd " 1,349, 3.80		51 26	
		20 " ½ " " 3,024, 4		120 96	
		5 " ⅝ " " 599, 4.30		25 76	
					197

EXHIBIT D—Continued.

	30.	6 sheets 10×36×120 C, 1, 1 " 8× " × " " " 1 " " 5/16× " × " " " 1 " " ×40× " " " } 1,561, 5½		89 76	
		1 keg 5½×½ rivits, 100, 7½		7 50	
		1 " 1½×11/16 " 100. "		7 50	
		1 box { 10 lb. @60 g'd emery, 10 @70 " " } 20, 12		2 40	
		1 keg 3×¼ lag screws, 175, 10		17 50	
					124 66
Nov.	5.	1 " 5×⅝ " " 190, 9		17 10	
		1 " 4×½ " " 199, 10		19 90	
		1 " 2½×⅜ " " 216, 15		32 40	
					69 40
	8.	6 bars 2½×½ iron, 6 " 2 × " " 10 " 1½×½ " 10 " 1½× r'd " } 1,655, 3.40			56 27
79	14.	6 " 6 ×1 " " 1,838, 3.60		66 17	
		2 b'd'ls 1 ×½ h'f " 243, 4.90		11 91	
		3 " ½ r'd " 366, 4.20		15 37	
					93 45
	17.	1 box borax, 50, 30		15 00	
		10 bars 1½ r'd iron, 1,113, 3.40		37 84	
		10 b'd'ls ¾ " " " 1,331, 3.60		47 92	
		10 bars ⅞ Lowmoor, 244, 12		29 28	
		2 " 1½ sq. Eng. c. steel, 1 " 1½ " " " " " } 224, 22		49 28	
					179 32
	18.	1 keg 5½×¼ rivits, 100, 7½			7 50
		Forward			4,866 05
1873.					
Nov.	18.	Am't bro't forward			4,866 05
	21.	W. H. Pettibone:			
		8 bars 3½×½ c. sp'g steel, 6 " 3½× " " " " " } 1,118, 11½			12 857
	26.	2 b'd'ls ¾ r'd Lowmoor, 223, 12			26 76
Dec.	8.	W'm Greene, Nichols:			
		120 kegs r. r. spikes, 18,000, 4½			810 00
	10.	R. W. Bushnell:			
		2 bars 1½ sq. Eng. c. steel, 2 " ¾ oct. " " " " 2 " ¾ " " " " " } 220, 22			48 40
	13.	W'm Greene, Nichols, Minn:			
		30 kegs 3½×½ bolts, 6,000, 5½			330 00
	17.	R. W. Bushnell:			
		6 bars 3 ×1 iron, 4 " 3 ×½ " " 10 " 2½× " " 15 " 2 × " " 10 " 2 ×½ " " 8 3 " 1½ r'd " 30 " 1½ " " } 5,940, 3.30		196 02	
		1 b'd'l 1 h'f oval iron, 126, 4.20		5 29	
		3 " ½ r'd " 394, 4.10		16 15	
		1 " ½ " " 100, 4.90		4 90	
		6 sheets 10×36 " 2 " 8×36 " } 1,325, 5½		69 56	
		1 keg ½×¼ rivits, 200, 14		28 00	
		1 " ½×¼ " 200, 14		28 00	
		1 " 1½×11/16 " 100		7 50	
					355 42
	24.	1 " 2½×½ " 100		7 50	
		5 bars 1½ r'd Lowmoor, 10 " ⅞ " " } 492, 12		59 04	
					66 54
					6,631 74
		Interest			323 86
					$6,955 63
		Settled by notes as follows:			
		Jan'y 20, '74, due July 13		1,153 42	
		" " " 23		1,155 87	
		" " " 28		1,157 11	
		" " Aug. 13		1,161 03	
		" " " 23		1,163 48	
		" " " 28		1,164 72	
				16,955 63	

(Endorsed:) Exhibit A and B.

81 EXHIBIT D.

CEDAR RAPIDS, *May* 15, 1874.

It is hereby agreed upon that the Burlington, Cedar Rapids and Minnesota Railway Company shall pay to Hale, Ayer and Co., on all notes past due maturity held by them and executed by said railway co., the interest on the amounts at the rate of eight per cent. per annum until paid; it is also agreed and understood that the twenty B., C. R. and M. R'y bonds, now held by Hale, Ayer and Co. as collateral to certain notes executed by said r'y co., to the order of Joliet Iron and Steel Co., even after the payment of the latter mentioned notes, shall be kept by them as securities or collateral for any indebtedness of said r'y co. to them: Provided, however, when said indebtedness shall be reduced to less than 50% of the par value of the bonds, any bonds in excess shall be surrendered to said railway company, until when the last payment is made the whole amount of bonds is to be given up to said r'y company.

BURLINGTON, CEDAR RAPIDS AND MINNESOTA R'Y CO.,
By GEO GREEN, *Prest.*

82 DISTRICT OF IOWA:

Upon consideration of the foregoing petition it is ordered that the same be set down for hearing at the next regular term of the U. S. circuit court, at Des Moines, and that notice be served upon the receiver for at least ten days before the day designated for the hearing.

Keokuk, Sept. 20, 1875.

(Signed) J. M. LOVE,
Judge.

(Endorsed:) U. S. circuit court, district of Iowa. Hale, Ayer and Co. ag't Ed. F. Winslow, receiver B., C. R. and M. R'y Co. Application for order to pay supply ac't. Filed Aug. 18, 1875. George B. Corkhill, clerk. Hubbard and Deacon, att'ys for pl'ff.

83 And on the 15 day of Oct., 1875, the said complainants filed their answer to said petition, which said answer is in words and figures following:

84 *Petition to be allowed on account & notes.*

In U. S. b. c't, dist. Ia.

HALE, AYER & CO.
vs.
EDWARD F. WINSLOW, RECEIVER.

Now come Charles L. Frost and Frederick Taylor, trustees under the first mortgage executed by said Burlington, Cedar Rapids & Minnesota Railway Company, and Philo C. Calhoun and Alexander Taylor, trustees under the mortgage on the Milwaukee division of said railroad company, and for answer to said plaintiffs' petition say:

1st. It may be true that said plaintiffs are and were partners under the name mentioned in said petition; and it may be true that said Burlington, Cedar Rapids & Minnesota Railroad Company is a corporation created under the laws of Iowa, as therein alleged.

2d. It may be true that plaintiffs furnished to said railroad company the articles named in said Account A, between the first day of March and first of August, 1873, but it is not true that said articles
85 named in said account, or in any part of said petition, were furnished as for current railway supply material for railroad repairs and not for construction account.

3d. And it may be that on the first day of August, 1873, there was an accounting between the plaintiffs and the said company, and there was due the sum of $20,866.24 principal, and interest $875, and notes were given therefor, as therein named, and payments may have been made thereon, as therein alleged, and new notes given, and the balance may be due as alleged; and it may be true that there was another bill rendered & another accounting, and notes given, as alleged.

4th. And it may be true that on the 15th of May, 1874, the said company agreed to pay the plaintiffs 8 per cent. interest on all notes unpaid, as by the agreement marked "Exhibit D," and defendants further answer and say that by said Agreement D twenty bonds, included in & secured by a mortgage on the Pacific division of said road, were to be kept and held by the plaintiffs as collateral security for said debt.
86 What the value thereof is the defendants do not know, and these defendants insist that the only way to ascertain the value is to sell the same.

5th. These defendants admit that said railway company is insolvent.

6th. It is also true that at the time of the furnishing said articles said company was building the Milwaukee division of their road, and said materials were nearly all used in building the said division. These defendants do not know what proportion & insist on proof thereof.

And, further answering, these defendants say that said bill of goods was furnished to the railway co. during the year 1873, while the said road was in possession & control of the railway corporation, and while said corporation was receiving the entire income of said road and paying the interest on its bonded debt.

And the nett income of said road, in said year 1873, was reported to the bondholding creditors to be $528,000.00 & upwards, and the said railway corporation was in possession of said property during the
87 whole of the year 1874, and its officers reported the nett income of said road for the year 1874 at four hundred thousand dollars and upwards.

And said railway corporation, on the first day of May, 1869, executed to Charles L. Frost & J. Edgar Thompson, now deceased, a mortgage on the first, second, & third divisions of said road, extending from Burlington to Plymouth, & intended to extend to Mankato, Minnesota, and on all the then and future acquired machinery of the corporation, & all their real & personal estate on said divisions, and on all their income from said property, to pay the interest on $400,000 of bonds secured by said mortgage.

And on the first day of January, 1872, the said corporation executed to Philo C. Calhoun & Henry Clews, as trustees, a mortgage on the Milwaukee division of said road, extending from near Cedar Rapids to Postville, and issued $2,200,000 of bonds under said mortgage.

On or before the May term of this court for 1875, the said corporation having neglected to pay the interest on either of said mort-
88 gages, & being in default on both, said Frost and said Calhoun & Clews filed bills in this court, at said May term, to foreclose said mortgages, and seize the income and profits of said corporation for the payment of said secured debt.

That said mortgages were both duly recorded long before the said debt of the plaintiffs was contracted, in all the counties in which said road and division were situate, and created a prior lien on all the income of said mortgaged property for the payment of said mortgage debt of which the plaintiffs were bound to take notice.

And the defendants aver that as well by said mortgages as by the filing of said bills, and the appointment of a receiver under them, the whole income of said property, from the date of said bills, was seized and taken possession of by this court for the protection and benefit of said prior liens.

And these defendants insist that said plaintiffs are entitled to no relief in this court, and the defendants pray that their bill may be dismissed.

(S'g'd) GRANT & SMITH, *For Pl'ffs.*

(Endorsed:) 608. Hale, Ayer & Co. vs. Edward F. Winslow, receiver. Answer of trustees. Filed Oct. 16th, 1875. George B. Corkhill, clerk. Grant & Smith for intervenors.

89 And on the 12 day of April, 1876, said petitioners filed their general replecation to said answer, which is in words and figures following:

General replication.

United States circuit court, district of Iowa. Consolidated causes.

CHA'S L. FROST & FREDERICK TAYLOR, TRUSTees, &c.,
vs.
BURLINGTON, CEDAR RAPIDS & MINNESOTA R'y Co.

ALEX. TAYLOR (SUBSTITUTED FOR HENRY Clews) & P. C. Calhoun,
vs.
SAME.

&

GEO. BLISS, FRED. BUTTERFIELD, & FRANK West
vs.
SAME.

General replication of Hale, Ayer & Co. to answer of plaintiffs
90 above-named to their petition for intervention in said cause.

To the honorable judges of the U. S. circuit court for the district of Iowa:

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, & insufficiencies of the answer of the said pla ntiffs, for replication thereunto say, that they do and will aver, maintain and prove their said bill to be true, certain, and sufficient in law to be answered unto by the said plaintiffs, and that the answer of the

said plaintiffs is very uncertain, evasive, and insufficient in law to be replied unto by these repliants. Without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in their said bill they have already prayed.

HUBBARD & DEACON,
Att'ys for Repliant Hale, Ayer & Co.

(Endorsed:) Cha's L. Frost & Fred Taylor et al., trustees, &c., vs. B., C. R. & M. R'y Co. et al. General replication of Hale, Ayer & Co. to ans. of pl'ffs to their interven'g petition.

We hereby consent to the filing of the forgoing replication.
(Signed) GRANT & SMITH,
For Compl'ts.

Filed by consent of Grant & Smith Sept. 12, 1876, as of Apr. 12, 1876.

C. R. MASON, *Cl'k.*

91 And on the 12 day of April there was filed in said cause, in addition to the general agreed statement of facts hereinbefore set out, an agreed statement of facts specially relating to the claim of said Hale, Ayer & Co., which is in words and figures following, to wit:

92 In the circuit court of the United States for the district of Iowa.
In equity.

FRED. TAYLOR (SUCCESSOR TO FROST), TRUSTEE,
vs.
THE BURLINGTON, CEDAR RAPIDS AND MINNESOTA RAILWAY COMPANY et al.

To the judges of the circuit court of the United States for the district of Iowa:

We, the undersigned, agree to submit the claim of Hale, Ayer & Co. (intervenors in case of Taylor, trustee, &c., vs. B., C. R. & M. R'y Co. et al.) upon the following statement of facts:

Hale, Ayer and Co. on August 1st & 10th, 1873, had an accounting and settlement with the Burlington, Cedar Rapids & Minnesota Railway Company, in which it appeared that said railway co. was indebted to said Hale, Ayer & Co. for supplies for machinery department and for machinery department, including interest, in the sum of 21,738.92.

93 At various times and in various amounts the sum of 12,295.74 was paid on a/c of the notes given ($9,443.18) in settlement of *or* said $21,738.92, and which consisted of $5,919.25 for supplies to machinery department, and $14,944.24 for materials for construction purposes, and $875.43 interest.

On the 20th January, 1874, another settlement was made for an amount of 6,955.63 due from said railway co. to said Hale, Ayer & Co., consisting of $4,422.99 for invoices of supplies for machinery department, $2,208.75 for material for construction purposes, and $323.89 interest.

On February 13, '74, the company's note matured for 1,552.78, given

to Hale, Ayer & Co. for supplies for machinery department in August, 1873.

Total due Hale, Ayer and Co., 17,951.59.

The following notes of the railway co. are now held for said claims, viz:

1 note	due	May 1, '74	1,552 78
1 "	"	Feb'y 13, '74	1,552 78
1 "	"	M'ch 13, '74	1,552 78
1 "	"	April 13, '74	1,552 78
1 "	"	May 13, '74	1,552 78
1 "	"	June 13, '74	1,075 44
94 1 note	due	June 23, '74	1,077 74
1 "	"	" 28, '74	1,078 88
1 "	"	July 13, '74	1,153 42
1 "	"	" 23, '74	1,155 87
1 "	"	" 28, '74	1,157 11
1 "	"	August 13, '74	1,161 03
1 "	"	" 23, '74	1,163 48
1 "	"	" 28, '74	1,164 72
			$17,951 59

Twenty Pacific division bonds of one thousand dollars each were delivered to said Hale, Ayer and Co. by the railroad company as collaterals to secure said debt.

No mechanic's lien is claimed.

Dated April 7th, 1876.

(S'g'd) HUBBARD AND DEACON,
Att'ys for Hale, Ayer & Co.

Dated April 11, 1876.

(S'g'd) GRANT & SMITH,
Attorneys for Trustees.

(Endorsed:) In cir. c't U. S., dist. of Pa. Fred. Taylor (successor to Frost), trustee, vs. B., C. R. & M. R'y Co. Statement as to claim of Hale, Ayer & Co. Filed Apr. 12th, 1876. E. R. Mason, clerk. G. & S. for trustee.

95 The points made and claimed by the intervening petitioners upon the pleadings and the agreed facts were these:

1. That the r'y mortgage is a prior lien only upon the net earnings of the road, after the payment of all operating expenses, while in the possession of the r'y company.

2. That after the default in the payment of interest Nov. 1, 1873, by the company, the facts that the mortgagees funded their coupons and left the company in possession of the road, constituted the company the agent and trustee in equity of the mortgagees, and they are now estopped from objecting to the payment of all legitimate debts contracted for operating expenses by the r'y company from the earnings of the road.

96 3. That the net earnings of the road, while in the possession of this court and operated by its receiver, are not necessarily and exclusively the property of the mortgagees, but are subject to the disposal of the chancellor in the payment of claims which have superior equities, if such shall be found to exist, and that these intervening petitioners' claims have superior equities to those of the mortgagees.

On which points and each of them the opinion of the judges were opposed.

And thereupon, the said causes coming on for final hearing, it was ordered and adjudged that the said petitions of the Union Car Spring Manufacturing Company and of Hale, Ayer and Company be dismissed at their costs, and that the pl'ff Frost et al. have judgment therefore, and go hence without day, and judgment was accordingly entered.

97 To all which rulings the intervening petitioners excepted at the time.

Thereupon, on motion of the counsel for the intervening petitioners that the points on which the disagreements hath happened may, during the term, under the discretion of the judges, be stated and certified under the seal of the court to the Supreme Court to be finally decided, it is ordered that the foregoing statement of the pleadings and the questions on which the disagreements of opinion hath happened, which is made under the direction of the judges, be certified accordingly at the request of counsel for the intervening petitioners, and the law in such cases made and provided, which is accordingly done.

(S'g'd.) SAM. F. MILLER.
" J. M. LOVE.

98 (Endorsed:) In U. S. C. court, district of Iowa. Cha's L. Frost, trustee et al. ag'st the B., C. R. & M. R'y Co. et al. Cer. of division to supreme court on claims of intervening petition. Filed June 8, 1876. E. E. Mason, clerk.

99 *Appeal bond.*

In the circuit court of the U. S., district of Iowa. May term, 1876.

CHA'S L. FROST, TRUSTEE, ET AL.
vs.
THE BURLINGTON, CEDAR RAPIDS AND MINNESOTA R'y Co. et al.

Know all men by these presents, that we, Hale Ayer & Co. & the Union Car Spring Manufacturing Co., as principal, and N. M. Hubbard, as security, are held and firmly bound unto Cha's L. Frost, trustee, &c., in the penal sum of one thousand dollars, for the payment of which well and truly to be paid we hereby bind ourselves, our heirs, executors, and assigns, firmly by these presents. Dated this 9th day of June, A. D. 1876.

The condition of this bond is such that whereas the said Hale, Ayer and Co. & the Union Car Spring Manufacturing Co., intervening petitioners in this case, have appealed from the judgment or order of the U. S. circuit court for the district of Iowa, made at the May term of said court, A. D. 1876, in a certain cause in equity wherein Cha's L. Frost, trustee, et al. is plaintiff, and the B., C. R. and M. R'y Co. is defendant, to the Supreme Court of the United States:

Now, if the said Hale, Ayer and Co. & the U. C. S. Man. Co. shall pay all costs and damages that shall be adjudged against them, and that they will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the Supreme Court may render or order to be rendered by the circuit court not exceeding in amount or value the original judgment or order, and all rents or hire or damages to the property during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal, and all costs and charges that may be awarded thereon by said

court, then this obligation to be void, otherwise to be and remain in full force.

(S'g'd) HALE, AYER AND CO.,
Principal,
By W. M. HUBBARD, *Att'y*.
THE UNION CAR SPRING MANUFACTURING CO.,
Principal,
(S'g'd) By N. M. HUBBARD, *Att'y*.
(") N. M. HUBBARD,
Security.

Approved this 8 day of June, A. D. 1876.
(S'g'd) SAM. F. MILLER, *Judge*.

(Endorsed:) Filed June 8, 1876. E. R. Mason, cl'k.

100 United States circuit court, district of Iowa. May term, 1876.
Thursday, June 8, 1876.

CHARLES L. FROST ET AL.
vs.
BURLINGTON, CEDAR RAPIDS AND MINNESOTA Railroad Company. } No. 608. Eq.

This cause came on this day for hearing and was submitted to the court upon the petition of the Union Car Spring Manufacturing Company for an order directing the receiver of this court herein to pay their claim for supplies set out in their said petition, the answer of complainants thereto, replication, and agreed statement of facts, said petitioners appearing by N. M. Hubbard, and said complainants, Frost et al., appearing by Grant and Smith.

And the court, after argument of counsel thereon, being ad-
101 vised in the matter, ordered that the said petitioners' said petition be, and is hereby, dismissed, and that said complainants recover of said petitioners their costs in this behalf, taxed at $, and that proper process issue for collection thereof, and the opinion of the judges being opposed in the questions arising under said petition, it was ordered that the same be certified to the Supreme Court of the United States.

Thereupon said petitioners prayed an appeal to the Supreme Court of the United States, and presented their bond in open court in the penal sum of one thousand dollars, which is approved and said appeal allowed.

102 United States circuit court, district of Iowa. May term, 1876.
Thursday, June 8, 1876.

CHARLES L. FROST ET AL.
vs.
BURLINGTON, CEDAR RAPIDS AND MINNESOTA Railroad Company. } No. 608. Eq.

This cause came on this day for hearing and was submitted to the court upon the petition of Hale, Ayer & Co. for an order directing the receiver of this court herein to pay their claim for supplies set out in their said petition, the answer of complainants thereto, replication, and agreed statement of facts, said petitioners appearing by N. M. Hub-

bard, and said complainants, Frost et al., appearing by Grant and Smith, and the court, after argument of counsel theron, being advised in the matter, ordered that the said petitioners' said petition be, and is hereby, dismissed, and that said complainant recover of said petitioners their costs in this behalf, taxed at $, and that proper process issue for collection thereof; and the opinion of the judges being opposed in the questions arising under said petition, it was ordered that the same be certified to the Supreme Court of the United States.

103

Thereupon said petitioner' prayed an appeal to the Supreme Court of the United States, and presented their bond in open court in the penal sum of one thousand dollars, which is approved and said appeal allowed.

104 In the circuit court of the United States, for the district of Iowa.

I, Edward R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of the certificate of division of opinion and of each paper therein named, together with the judgment, entries, and appeal bond in the matter of the intervening petitions of the Union Car Spring M'f'g Co. and Hale, Ayer & Co., in a certain cause in said court, wherein Cha's L. Frost et al. are plaintiffs, and The Burlington, Cedar Rapids and Minnesota R. R. Co. et al. are defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 5th day of Sept., A. D. 1876.

[SEAL.]

EDWARD R. MASON,
Clerk U. S. C. C., District of Iowa.

(Indorsement on cover:) No. 213. Hale, Ayer & Company & The Union Car Spring Manufacturing Company, intervenors, appellants, vs. Charles Frost, trustee, &c. Iowa C. C. U. S. Filed 10th October, 1876.

REC. 213—3

O

SUPREME COURT OF THE UNITED STATES.

WILLIAM R. FOSDICK, *et al*,
vs.
MICHAEL SCHALL.

F. W. HUIDEKOPER,
vs.
HINKLEY LOCOMOTIVE COMPANY.

WILLIAM R. FOSDICK, *et al*,
vs.
THE SOUTH-WESTERN CAR COMPANY.

BRIEF OF CHAS. A. CLARK and N. M. HUBBARD, *for the Appellants* in the case of Hale, Ayer & Co., and The Union Car Spring Manufacturing Co., *Appellants*, *vs.* Chas. L. Frost, *et al*, Trustees, etc. No. 213, involving similar questions.

Republican Co., Printers, 46 Eagle St., Cedar Rapids.

SUPREME COURT OF THE UNITED STATES.

NUMBER 213.

HALE, AYER & COMPANY, AND THE UNION CAR SPRING MANUFACTURING COMPANY, *Intervenors, Appellants.*
vs.
CHARLES L. FROST, Trustee, etc.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

BRIEF OF CHARLES A. CLARK AND N. M. HUBBARD.
For Appellants.

STATEMENT.

Between 1867 and 1873, The Burlington, Cedar Rapids & Minnesota Railway Company, a corporation duly organized under the laws of Iowa, built and put in operation about three hundred and eighty miles of railroad in the State of Iowa, consisting of a main line from Burlington, *via* Cedar Rapids, to Plymouth, about 229 miles; the Pacific Division, extending west from the main line at Vinton, about twenty-five miles; the Muscatine Division, extending from Muscatine west across the main line about 32 miles, and the Milwaukee Extension, extending from the main line near Cedar

Rapids to Postville, about 94 miles. The main line was mortgaged to secure about five million bonds in May, 1869, the Pacific Division to secure about $1,800,000, bonds in September, 1871, the Milwaukee Extension to secure about $2,200,000, bonds in January, 1872, and the Muscatine Division to secure about $1,800,000, of bonds in July, 1872. The Railway Company paid interest on these bonds until November 1, 1873, when it made default as to the interest due for the then past six months. By the terms of the mortgages, Article 2, (record, page 4,) whenever such default of payment shall continue for the period of six months, it shall be lawful for the trustees to take immediate possession of the railway, operate it by such superintendents or agents as the trustees may appoint, and take and receive all rents, incomes, etc., and apply the same to payment of the interest and principal of the bonds. It is also further provided by Article 3 of the mortgages that it shall be lawful for the trustees with or without entry, to sell the railway and all its branches at public auction, at the city of New York, after six months notice of such sale through one or more newspapers at New York, Philadelphia and Cedar Rapids, (record, p. 4).

(The mortgage set out in the record is that of the Milwaukee Extension, but all the mortgages upon the main line and all the branches are alike in form and substance.)

Instead of exercising the rights of entry and sale given by the mortgages, or of proceeding in a court of equity to foreclose the mortgages, the bondholders of the main line and branches, consented to and did fund their interest coupons due on the first of November, 1873, and for twelve months next thereafter, and allowed the railway company to retain the possession of the road and all its rents, issues and income. On the first day of May, 1875, the railway company again made default in the payment of interest on the

bonds, and on the 19th of May, 1875, the trustees filed a bill to foreclose the several mortgages on the main line and branches and obtained the appointment of a Receiver, who took immediate possession of said railway and branches by order of the United States Circuit Court for Iowa, and the railway company has never since that day had possession or received any of the rents or profits of the same.

On the first of November, 1873, when the railway company first made default in the payment of interest on its bonds, there was a "floating debt," for equipment, construction, repairs, wages of men, taxes, etc., of about $1,600,000. Between November, 1st 1873, and May 1st, 1875, the gross earnings of the main line and branches were about $1,772,-249.74, and the net earnings during the same time, over and above operating expenses, taxes, etc., were about $550,-000.00, all of which was disbursed in the payment of the "floating debt" above mentioned. On the first of November, 1873, the railway company owed for back wages to employes, wages, taxes and *current supplies then on hand and subsequently used by the company*, about the sum of $150,-000.00. On May, 19, 1875, when the Receiver was appointed, the company owed for back wages to employes, $81,250.02, and for current supplies about $60,000.00 (record p. 14.) The net earnings of the railway and branches, over all operating expenses, for eight and one-third months under the Receiver were $337,540.35, and which sum was subject to the order of the court below for distribution, (record p. 16.)

CLAIM OF HALE, AYER & COMPANY.

Pending the foreclosure proceedings, and on August 18, 1875, Hale, Ayer & Company, filed their petition in the case as intervenors, setting forth in substance that between March and January, 1874, they sold to the railway company

about $31,926.61, of supply and construction material as shown by the amount set forth on pp. 19, 25, record. Notes were given aud payments made from time to time until the last settlement on 20th, January, 1874, when there was due Hale, Ayer & Company, principal and interest $17,951,59, of which $9,080.65, was for construction material and $8,870.94, was for supplies for repairs in the machinery department. The above is the result of the agreed facts found on pp. 29 and 30, record. The supply and construction material are ascertained by applying the payments *pro rata* to each.

When the petition of intervention was filed it was supposed that all the material was supplies for repairs. It is quite certain that as to the construction material, a mechanics' lien is given by the statutes of Iowa, and they may not be the subject of a lien on moneys in the hands of the Receiver, and these are therefore stated separately. There is no coutroversy about the amount due, and what the material was for, but it is agreed as above stated.

THE CLAIM OF THE UNION CAR SPRING MANUFACTURING COMPANY.

On December 6th, 1875, the Union Car Spring Manufacturing Company filed its petition of intervention in the foreclosure case, claiming the sum of $460.42, for car spirals and springs in April and May, 1875, and just previous to the appointment of the Receiver. It is agreed that the spirals and springs were had as claimed, that the value is correctly stated, that the amount is correct, and that the spirals and springs were in use by the Receiver, etc., (record 13, folio 46).

The trustees appeared and answered in substance to both petitions, that their mortgages were made and recorded long prior to the sale of the supply and construction mater-

ial by both the intervenors and that such mortgages were and are a paramount lien upon the railway and branches and upon the franchises and income of the same. Replications were filed, and June 8th, 1876, the causes were tried together before Mr. Justice Miller and Love J., upon the pleadings and agreed facts, and decree entered dismissing the petitions of the intervenors. Prior to the decrees however, the opinion of the judges being opposed upon the following points claimed by the intervenors, the same were by the said judges duly certified to this court to be finally decided, namely:

1. That the railway mortgage is a prior lien only upon the net earnings of the road, after the payment of all the operating expenses, while in the possession of the railway company.

2. That after the default in the payment of the interest November 1st, 1873, by the company, the facts that the mortgagees funded their coupons and left the company in possession of the road, constituted the company the agent and trustee in equity, of the mortgagees, and they are now estopped from objecting to the payment of all legitimate debts contracted for operating expenses by the railway company from the earnings of the road.

3. That the net earnings of the road, while in the possession of this court, and operated by its Receiver, are not necessarily and exclusively the property of the mortgagees, but are subject to the disposal of the Chancellor in the payment of claims which have superior equities, if such shall be found to exist, and that these intervening petitioners' claims have superior equities to those of the mortgagees, (record 30, 31).

These cases involve the same questions raised in the cases of *Kuidekoper et al., vs. The Hinkley Locomotive*

Works, and *Fosdick et al., vs. The South-western Car Company*, appeals from the U. S. Circuit Court. for the Northern District of Illinois, and specially assigned for January 7th, 1879.

ERRORS.

1. The court below erred in not sustaining each of the points made and claimed by the appellants.

2. The court below erred in dismissing the petitions of intervention of the appellants.

ARGUMENT.

There are over eighty thousand miles of railroad in the United States, and about an equal number in Europe, enough to girdle the earth with seven tracks. And they are all the work and growth of a single generation! They represent a capital in the United States greater than the National debt at the close of the war. Two million five hundred thousand, or about one-twentieth of the people are employed in the operation of them or dependent on them for support and livelihood, and nearly as many more have been engaged for the past thirty years in their construction. With rare exceptions they have been built with the proceeds of mortgages made before or at the time the building of the road began. The civil and the common law were the growth of a thousand years, during which time a railroad was not even dreamed of. The ox harnessed by the horns, and the slave bearing burdens upon his head, were the "common carriers," by land when the foundation and the magnificent super-structure of the civil and the common law were builded. Titles to real estate began when Abraham and Lot separated their flocks, the one going eastward to the goodly well watered plain of Jordan, while the other "dwelt in the land of Canaan," and perhaps Esau foreshadowed a mortgage. The civil and the common law

have refined and elaborated these with marvelous wisdom, but the Pandects and the Year books are innocent of any allusion to a railroad. Yet to these the courts have looked for precedents and analogies, and they have come to liken a railroad mortgage to a farm mortgage. They are as incomparable as a Chinese palanquin, or a Roman litter to a first class railway coach; both are for passenger carriage; so both mortgages are to secure money, and there all likeness ends.

What is a Railroad?

1. It is a public highway, in which the public have rights and interests.

2. It is a common carrier of freight and passengers for hire.

3. Its only value, namely, its tolls, are the subject of Legislative control.

4. It cannot be abandoned or taken up without Legislative consent, and is therefore perpetual.

5. Its only interest in real estate is an easement to which the title reverts upon non-user.

6. The franchise which gives the power to exercise the right of eminent domain to take the right of way, and the right to charge tolls.

7. The only private attribute it has is the right to appropriate such tolls and incomes as the Legislature may authorize to be charged, to reimburse those who furnished the capital to build it.

8. It requires two-thirds of the earnings of the best roads, and nine-tenths of many, not to make permanent improvements upon it, but to replace the daily wear and waste, and for operating expenses.

9. If not repaired, in a single month it becomes unsafe, and in six months it becomes a wreck; trade leaves it and it has neither gross nor net earnings. For, while a railroad is bound to carry all that the public demand, the public are under no obligation to use it at all.

10. A railroad is not built to sell and pass from hand to hand like ordinary real estate. Other real estate may be used for a thousand different purposes; a railway road-bed with embankments and cuts of a hundred feet, and with tunnels five miles long, are absolutely worthless except for a railroad.

11. A ship may sail to or from any port, and shift her course as trade shifts. A railroad is stationary, and is worth only what the commerce within the limits of a few miles on either side and at its *termini* pays in tolls, after deducting the necessary repairs and expenses of operation. If these consume all the tolls, then the road is worth nothing as a railroad, but simply what the old ties will bring for wood, and the rails for old iron.

12. So a railroad is a public, commercial highway, perpetual and stationary, and is worth the sum upon which its *net earninys* will pay a reasonable interest, and nothing more.

When a man buys a bond secured by a mortgage upon a railroad, to what does he look for the payment of principal and interest? There is but one answer: *To the net earnings.* If he buys a note secured by mortgage upon a farm or a city lot with a block upon it, to what does he look for his principal and interest? *To the intrinsic value of the land or the lot—its worth in the market to sell for money.*

It is true that repairs and improvements upon ordinary mortgaged property inure to the benefit of the mortgagee, and no lien will lie for them upon the premises unless

given by statute, as against the mortgagee, and counsel for the bondholders elaborate this with "infernal artifice and diabolical skill." And with this argument alone they seek to defeat the payment for supplies and repairs for railroads from the gross earnings. There is no analogy between ordinary real estate and a railroad mortgage, nor is there any analogy between the repairs upon the two. The repairs upon a farm or upon a lot require but a modicum of the rent, and they are in the nature of real improvements, while those upon a railroad are to supply actual waste and wear from day to day and are only *replacements* and not improvements, and require from two-thirds to nine-tenths of the whole revenue to make them.

It is not claimed that equipments or extension of track, or buildings in the nature of permanent improvements ought to be the subject of a lien upon the earnings. Only such supplies as are necessary to repair waste and deterioriation from day to day, and to operate the road. These are absolutely necessary for the security of the mortgage. Without them the mortgage decreases in value from day to day, and in six months would become practically of no value without these supplies and repairs. It is not so with a mortgage upon ordinary real estate. There the mortgagee looks to the intrinsic value of the land, *without any expectation of repairs or improvements*, as fully sufficient. He does not invite or expect improvements or repairs to secure his loan. If improvements are put upon it they do him no good, but result in a benefit to the mortgagor, either when the mortgage is paid, or in the surplus of a sale, if a sale shall become necessary.

Ordinary real estate mortgages are expected to be paid in money; railway mortgages are not expected to be paid, except it be by substituting a new mortgage. It is a perpetual investment, not for sale, but for use as a commercial highway, and its value is its net tolls.

9. If not repaired, in a single month it becomes unsafe, and in six months it becomes a wreck; trade leaves it and it has neither gross nor net earnings. For, while a railroad is bound to carry all that the public demand, the public are under no obligation to use it at all.

10. A railroad is not built to sell and pass from hand to hand like ordinary real estate. Other real estate may be used for a thousand different purposes; a railway road-bed with embankments and cuts of a hundred feet, and with tunnels five miles long, are absolutely worthless except for a railroad.

11. A ship may sail to or from any port, and shift her course as trade shifts. A railroad is stationary, and is worth only what the commerce within the limits of a few miles on either side and at its *termini* pays in tolls, after deducting the necessary repairs and expenses of operation. If these consume all the tolls, then the road is worth nothing as a railroad, but simply what the old ties will bring for wood, and the rails for old iron.

12. So a railroad is a public, commercial highway, perpetual and stationary, and is worth the sum upon which its *net earnings* will pay a reasonable interest, and nothing more.

When a man buys a bond secured by a mortgage upon a railroad, to what does he look for the payment of principal and interest? There is but one answer: *To the net earnings.* If he buys a note secured by mortgage upon a farm or a city lot with a block upon it, to what does he look for his principal and interest? *To the intrinsic value of the land or the lot—its worth in the market to sell for money.*

It is true that repairs and improvements upon ordinary mortgaged property inure to the benefit of the mortgagee, and no lien will lie for them upon the premises unless

given by statute, as against the mortgagee, and counsel for the bondholders elaborate this with "infernal artifice and diabolical skill." And with this argument alone they seek to defeat the payment for supplies and repairs for railroads from the gross earnings. There is no analogy between ordinary real estate and a railroad mortgage, nor is there any analogy between the repairs upon the two. The repairs upon a farm or upon a lot require but a modicum of the rent, and they are in the nature of real improvements, while those upon a railroad are to supply actual waste and wear from day to day and are only *replacements* and not improvements, and require from two-thirds to nine-tenths of the whole revenue to make them.

It is not claimed that equipments or extension of track, or buildings in the nature of permanent improvements ought to be the subject of a lien upon the earnings. Only such supplies as are necessary to repair waste and deterioriation from day to day, and to operate the road. These are absolutely necessary for the security of the mortgage. Without them the mortgage decreases in value from day to day, and in six months would become practically of no value without these supplies and repairs. It is not so with a mortgage upon ordinary real estate. There the mortgagee looks to the intrinsic value of the land, *without any expectation of repairs or improvements*, as fully sufficient. He does not invite or expect improvements or repairs to secure his loan. If improvements are put upon it they do him no good, but result in a benefit to the mortgagor, either when the mortgage is paid, or in the surplus of a sale, if a sale shall become necessary.

Ordinary real estate mortgages are expected to be paid in money; railway mortgages are not expected to be paid, except it be by substituting a new mortgage. It is a perpetual investment, not for sale, but for use as a commercial highway, and its value is its net tolls.

If the interest upon the mortgage is paid, no foreclosure takes place. If not, the road is sold, and invariably to the bondholders under the mortgage. What does the bondholder receive after foreclosure? Nothing but the net earnings. If they do not pay his interest, he must go without it. Why should the bondholder be entitled to more before foreclosure than afterwards? And yet adopting the maxim, "what never has been, never ought to be," he invokes the *want* of precedent in the civil and the common law, and insists that therefore a court of equity is powerless to pay the wages of men or for supply material for repairing, without which the value of the mortgage would most certainly be greatly impaired, and if sufficiently long continued would be utterly annihilated. The want of precedent is admitted, but it is useless to fumble the "dust of ages," to find analogies for railway mortgages. As well might we expect to find the principle of the electric pen or the telephone in a black letter description of Guttenburg's wooden type. Practically the mortgagees of a railroad own it, for stock dividends are not sufficiently frequent to be compared to angel's visits.

The bondholder is in no position to complain or to object to the payment of wages or supplies for repairs, because:

1. He knows, as everybody knows, the value of his mortgage and the payment of interest upon it depend upon the labor and the supplies being furnished.

2. He selects the mortgagor company, and the route of the road, or adopts them, and neither the laborer nor the supply man selects either. The subsequent purchaser of the bonds knows, or ought to know, the route of the company before he buys.

3. He knows that all depends upon the earnings of the road, and that the labor and the supplies to repair, are conditions precedent to his interest money.

4. If it be said that the mortgagor company misappropriated the proceeds of the mortgage and thus rendered the road insolvent, and necessitated a foreclosure of the mortgage, the same answer is at hand. The mortgagee selected the company, and not the laborer or the supply man.

Forced by the monstrous injustice of making a railway mortgage a drag-net to obtain for nothing the labor and supplies which are directly necessary to the security of the mortgage, the courts have *advised* the mortgagees to pay the back wages of the men in case of foreclosure and a receiver, and the bondholders have pretended to do so as a sort of charity! It is believed that there has been no case of railway foreclosure where the back wages of the employes have not been paid. They were paid by the receiver of this road. Yet it is difficult to see why the engineer should be paid and the supply man who furnishes coal to make steam for the engine, oil to oil it, and steel and iron to repair it, should not also be paid. In some few instances the bondholders have refused to pay the wages of the men, or supplies, as in Douglass *vs.* Cline *et al*, Sup. Court of Ky., 1876, but the courts have always became subtile and even curious to find a way to pay them. In the case just mentioned the decision was based upon the third proposition above stated. The decision is sound, but the ground upon which it is put is questionable. The true ground is that the bondholder relies only upon the net earnings, and therefore every notion of common honesty cries out against his objection to paying for the wages and material by which only his bond has any value. Neither Congress nor the State Legislature can pass any retrospective laws to enforce this palpable right as to roads already built, and to supply just such defects, is precisely what courts of equity are for.

Wages and material for repairs to replace from day to day actual wear and deterioration of a railroad have the

same footing for an equitable prior lien, as the maritime lien upon vessels for wages and material.

A ship is engaged in public commerce; so is a railroad. She is liable to unforeseen casualties from collisions and the elements; so is a railroad, for in a single night the value of many ships is washed away. A ship is of no value unless she earns freight and passage money, and hence the ancient maxim was, "freight is the mother of wages." She can earn no freight without a crew, supplies and repairs, and hence it is, as well said by Mr. Justice Clifford in "*The Belfast*," 7 Wal., 643, "they have such a lien because, upon the principles of the maritime law, such materials and supplies are presumed to be furnished on the credit of the vessel." And this presumption is fair and well founded, because it cannot be doubted that the owner and incumbrancer must, in equity, consent to the payment of whatever may be absolutely necessary to create value to the owner and security and ultimate payment to the incumbrancer. All these principles hold good as to a railroad. It is of no value only as it earns freight and passage money. It cannot earn these without a "crew, supplies, and (*daily*) repairs." Is it to be doubted that if railroads had been invented contemporary with ships, that the same lien would have been given against both for wages and materials? The analogy seems to us complete, while the similarity of a railway to an ordinary mortgage is wholly wanting in every particular except in name. Following a false analogy is not new, and therefore not strange. More than two hundred years ago, Lord Coke injected into the maritime law of Great Brittain the doctrine that the admiralty jurisdiction is limited to waters within the ebb and flow of the tide. It was well enough for Great Britain for she had no waters which were in fact navigable beyond tide water. This court followed the doctrine seventy years, and until the case of The Genesee Chief, in ~~1837~~ 1851, 12 Howard, 443.

In speaking of this case Mr. Justice Clifford (*The Belfast supra*, 639,) says: "Prior to that decision, the western lakes and navigable rivers of the United States, above tide waters, were not supposed to be waters within the admiralty and maritime jurisdiction of the Federal courts. Strange as that proposition may now appear to one familiar with the provision contained in the ninth section of the Judiciary Act, it is nevertheless true that the rule restricting admiralty jurisdiction to tide-waters had prevailed from the organization of the judicial system to that date, but the effect of that decision was to dispel that error and place the admiralty jurisdiction upon its true constitutional basis."

It is to be hoped that seventy years will not elapse before it will appear a "strange proposition," that a prior lien for wages and supplies to operate and repair a railroad was ever denied.

II.

As to the second point:

November 1, 1873, the railway company made default in the payment of interest upon its several mortgages upon the main line and branches. Instead of proceeding to foreclose the mortgages, or taking possession to sell the road as provided in the mortgage, the bondholders funded their interest coupons for eighteen months and left the road during all that time in the possession of the company. Of course all the public, and especially those who dealt with the company and furnished supplies, and the employes, knew fully of these facts.

If the bondholders had taken steps to foreclose, or had it been known that they proposed to do so, it is entirely clear that the $1,765, worth of goods sold by Hale, Ayer & Co.,

in November and December, 1873, would not have been sold on credit, nor would any part of the Union Car Spring Manufacturing Company's goods been sold to them.

The action of the bondholders said quite as plainly as words could say, "We believe that the company is trustworthy, and that with the 18 months time we propose to give them, they will be able to pay the interest due us, and keep all their engagements with their operatives and supply men. Of course to do this they must have credit, and we hope the employes and supply men will continue to give the road credit as heretofore.

All we can look to for payment is the net earnings, and if your employes and supply men go on and trust the company, you shall be paid from the gross earnings of the road."

The employes and supply men did continue to trust the company. When the Receiver took possession in May, 1875, the company owed the employes back wages in the sum of $81,260.32, which has all been paid, and for current supplies, $60,000.00, the payment of which is refused.

The company owed, and still does, over one million dollars of floating debt for equipment, construction, etc, which is not claimed to stand on such a footing as to he entitled to priority over the mortgage. It is only for such current supplies for repairs as were furnished within a reasonable time prior to the default of the Company to pay its interest, and which ought fairly to be presumed were furnished on the credit of the road, and were for necessary daily repairs to the end that the operation of the road should continue, that we claim should be paid from the earnings prior to the payment of the bonds.

When the petition was filed in the case of Hale, Ayer & Co., it was supposed that the whole amount of their account was for current supplies, but the agreed facts show $9,080.65, for construction and $8,870.94, for supplies. We make no claim for payment here for the construction material.

It will be observed that all the supplies were furnished within the six months previous to the default in the payment of interest by the Company, and the funding of the coupons.

If, as we claim, the Company from that date became the agent and trustee of the bondholders, this account is within the rule laid down by Judge Drummond in the causes now on hearing.

Perhaps the strongest authority on the question of agency of the Company for the trustees is,

Duncan vs. R. R. Co., Am. Law Register 1876, *Vol.* 15, (*U. S.*) 428.

This authority and all others bearing upon all the questions, have been cited, fully extracted and commented upon by other counsel in their briefs filed in similar cases. It is not our purpose to repeat them.

The broad question is whether the wages to operate, and the material and wages to repair and replace daily deterioration of a railroad and its equipment, are not in equity a lien prior to any mortgage or other incumbrance upon it.

The doctrine rests upon these considerations:

1. The value of a railroad is its net earnings.

2. To create net earnings men and material to operate and repair must be had.

3. These have been invariably, and must be obtained on the credit of the road for a reasonable time.

4. They are not merely *beneficial* to the mortgage, but a *necessity* to its value and security.

5. In case of mortgages on other property no such necessity exists, and hence there is no analogy.

6. The opposite doctrine is palpably and flagrantly injust and oppressive, and rests upon no better reason than that the courts, in cases not at all analagous, have never decreed the like.

III.

As to the third point:

This question has been fully argued by other counsel, and all the cases quoted, particularly the Kentucky and Alabama cases. It depends upon whether the employes and material men have superior equities, and this again depends upon whether the labor and supplies were a necessity to the security of the mortgage, and the bondholder ought therefore in equity to pay them from the earnings. The nature and character of a railroad mortgage is to be considered, stripped of the false analogies by which it is attempted to be measured and weighed.

The doctrine that permanent improvements and repairs to ordinary real estate inure to the benefit of the mortgage is fast dying, as may be seen by the mechanics' lien laws in nearly all the states making them prior liens, or authorizing the improvements to be removed. And as to such improvements and repairs, they are voluntary so far as the mortgagee is concerned, and are neither necessary to his security, nor invited by him. But in the case of a railroad, they are vital to his security, he knows they must be made

from day to day, and hence the very act of buying a bond secured by such a mortgage, is an invitation to repair and to operate, for without them he "gripes a barren sceptre." He knows this can only be done by the use of so much of the earnings as necessary for that purpose, and so the bondholder invites and consents to such use.

The defense of the bondholders to such claims is as technical as that of the administrator to an action of assumpsit for a coffin on the ground that it was not furnished at the instance and request of the deceased!

These claims for material and wages are everywhere being pressed upon the courts, and sooner or later their righteousness must be acknowledged.

CHAS. A. CLARK AND
N. M. HUBBARD,
Solicitors for Appellants.

IN SUPREME COURT OF THE UNITED STATES.

No. 1112.

HALE, AYER & CO., AND THE UNION CAR SPRING MANUFACTURING COMPANY, APPELLANTS,

vs.

CHARLES L. FROST, AND OTHERS, *TRUSTEES*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IOWA.

ARGUMENT FOR THE APPELLEES, BY GRANT & GRANT.

FILED, , 187 .

In the Supreme Court of the United States.

No. 211.

HALE, AYER & CO., AND
THE UNION CAR SPRING MANUFACTURING COMPANY,
Appellants.

vs.

CHARLES L. FROST, AND OTHERS, TRUSTEES,
Appellees.

Argument for Appellees.

STATE OF THE FACTS IN BOTH CASES.

These cases are intervening petitions to a foreclosure suit of Frost and others, in railroad mortgages, to secure about ten millions of dollars.

Only one of the mortgages is set out in the record (page 1), and the petitions for a foreclosure are omitted, to save a useless enlargement of the record; as the fact that the mortgages were due, a foreclosure petition filed, and a receiver appointed are conceded. (Record, p. 14.)

UNION CAR SPRING COMPANY CASE.

This case is first in order. An intervening petition was filed (record, p. 9), stating that they sold goods, wares, and merchandise to the *railway company* for current supplies and repair of their lines of road, as per exhibit "A,"

which (on p. 10) was car springs, in March and April, 1875, and that the railroad company is insolvent, and they pray that the receiver may be ordered to pay them out of the earnings of the railroad.

The answer (p. 11) admits the furnishing of the goods and insolvency of the railroad, and sets up the superiority of the mortgage lien; that the increase of the property is not sufficient to pay the mortgage debt, and that subsequent to the plaintiff's claim became due, the property was taken possession of for the benefit of the mortgage creditors.

The facts were agreed upon (record, p. 14), that a default was made in the mortgages in November, 1873; the time was extended for eighteen months, and in May, 1875, default in the payments of the mortgage interest; that after default in November, 1873, until second default in May, 1875, the net earnings were applied in payment of floating debt and part operating expenses.

The mortgage lien covered the income of the road. (See record, p. 4, near top.)

LAW ARISING IN THIS CASE.

FIRST POINT: Mortgage is a prior lien only on the net earnings, after paying all the operating expenses while in possession of the railroad company. (Record, p. 30.)

The statute of Iowa settles that question. We print the statute here, from the Code of 1873, though it was enacted in 1858, in the exact words of the Code:

"SECTION 1283. Any corporation shall have power to "issue its bonds for the construction and equipment of its "railway in sums not less than fifty dollars, payable to "bearer or otherwise, and bearing interest at a rate not ex- "ceeding ten per cent. per annum, and make the same con- "vertible into stock, and may sell the same at such rates,

"or prices, as is deemed proper, if such bonds are sold be-
"low the par value thereof. They shall nevertheless be
"valid and binding, and no plea of usury shall be allowed
"such corporation in any action or proceeding brought to
"enforce the collection of said bonds; such corporation
"may also secure the payment of said bonds by executing
"mortgages, or deeds of trust, of the whole, or any
"part of its property and franchises.

"SEC. 1284. Said mortgages, or deeds of trust, may by
"their terms include and cover not only the property of
"the corporation making them at the time of their date,
"but property, both real and personal, which may thereaf-
"ter be acquired, and shall be as valid and effectual for
"that purpose, as if the property were in possession at the
"time of the execution thereof.

"SEC. 1285. Said mortages, or deeds of trust, shall be
"executed in such manner as the articles of incorportion,
"or by-laws of the corporation, may provide, and shall be
"recorded in the office of the recorder of each county
"through which the railway of the corporation may run,
"or in which any property mortgaged, or conveyed by such
"deeds of trust may be situated, and shall be notice to all
"the world, of the rights of all parties under the same and
"for this purpose, and to secure the rights of mortgagees
"or parties interested under deeds of trusts so executed
"and recorded, the rolling stock and personal property of
"the company properly belonging to the road and apper-
"taining thereto, shall be deemed a part of the road, and
"said mortages and deeds so recorded shall have the same
"effect both as to notice and otherwise as to the personal
"as the real estate covered by them."

It will be seen that the mortgage is just as complete and effectual a lien upon the income of the road as upon the road itself, and is notice to all the world from the re-

cording thereof, as to the rights of the mortgagee; if the mortgagee neglects to seize the revenue, and it is expended, he may not claim it; but when he seizes it by the appointment of a receiver his prior lien is superior to all other persons.

SECOND QUESTION: that after default, the mortgagees by allowing the debtor to remain in possession, make him their agent and trustee in equity, and they are estopped from objecting to the payment of all legitimate debts contracted by the defendant for operating expenses from the earnings of the road.

In plain English, this proposition is gravely stated, that a creditor who has a statutory lien, not only looses the income secured by his contract, but constitutes his debtor to create debts binding on the mortgage property, and to be preferred over the lien creditor, because he does not eject the debtor and take possession of the property, even where the unsecured creditor has no lien whatever.

This principle has no authority to sustain it. Mortgagees have allowed debtors to remain in possession, and extended the time of payments for the last two or three centuries, but no court has ever been found to sustain this doctrine.

There is no property between the mortgagee and the mortgagor in that respect, any more than between an owner and a contractor; and it has been held that in a claim for a mechanics' lien, the contractor is not the agent for the owner, either for the employment others or the acquisition of materials to perform the contract.

Phillips on Mechanics' Lien, §205.

THIRD QUESTION (record, p. 30): that the net earnings of a road, while in possession of a court and operated by a receiver, are not necessarilly and exclusively the property of

the mortgagee but are subject to the disposal of the chancellor for the payment of claims which have superior equities, if such shall be found to exist, and that then intervening creditors have superior equities to the mortgagees.

The first proposition admits of no discussion under the laws of Iowa, in relation to railroad mortgages. The statute of Iowa in express terms makes the mortgage a prior lien on all "subsequently acquired property, both real and "personal, and as valid for that purpose as if in the debt-"or's possession at the date of the mortgage." (Code above quoted, section 1284.)

"And the recording of the mortgage shall be notice to "all the world of the rights of the parties." (Code, section 1285.)

But if that part of the question was not as the statute makes it, the last part of the question must be answered, that the plaintiff not only has no equitable lien against the mortgage, but none against the debtor himself.

This is a claim for goods sold and delivered—"spiral "and car springs." (Record, p. 10.)

There is no averment that the vendor retained the title to himself or any lien on the property.

It is a general rule of the common law, that a vendor of personal property waives a lien on it by parting with the possession.

Phillips on Liens, section 506.

If this property had been cars instead of car springs, and the vendors had delivered them to the railroad company without reserving a lien, which he might have done under the statutes of Iowa, the plaintiffs would have no legal or equitable lien against the debtor, much less against a mortgage creditor whose lien was preferred by statute. If the debtor purchasing these car springs had put them

into cars, or sold them, or mortgaged them, the vendor would not have had any lien whatever in equity.

New England Car Co. *vs.* Bal. & Ohio R. R., 11 Md. Reports, 81

Courts of equity do not give liens to vendors of personal property, who, when parting with the property, do not reserve one, and there is no pretense that plaintiffs have a statutory lien.

SECOND CASE — CLAIM OF HALE, AYER & CO.

The plaintiffs in this case filed an intervening petition, (record, p. 16), for goods sold to the defendant railroad corporation, in 1873, all of which long prior to the second default, were between the 1st of March and 1st of August, 1873, (record, p. 17); that on the 1st of August, 1873, divers notes were given for the debt, payable thereafter; that between the 1st of August, 1873, and 25th of December, 1873, other goods were sold to the defendant railroad corporation, and on Jan. 20th, 1874, notes were given for this debt; that on May 15th, 1874, said accounts were settled and an agreement made to pay eight per cent. interest. This agreement is on page 26 of the record. The material part of it is not set out in the petition, it is merely referred to. It is as follows:

"CEDAR RAPIDS, May 15, 1874.

"After agreement to pay eight per cent. interest, the "contract says: It is also agreed and understood that the "seventy Burlington, Cedar Rapids & Minnesota Railway "bonds now held by Hale, Ayer & Co., as collateral to cer- "tain notes executed by said railway company to the or- "der of the Joliet Iron and Steel Company, even after the "payment of the latter mentioned notes, shall be kept by "them as securities or collateral for any indebtedness of "said railway company to them; provided, however, when "said indebtedness shall be reduced to less than fifty per "cent. of the par value of the bonds; any bonds in excess

" shall be surrendered to said railway company, until when " the last payment is made, when the whole amount of " bonds shall be given up to the railway company.

" BURLINGTON, CEDAR RAPIDS & MINNESOTA R'Y CO.

"*Per* GEO. GREENE, *President*."

The defendants answered (page 26), setting up the mortgages as a superior lien and denying the right of the plaintiffs to any lien on the income in the hands of the Court.

The receipt of collateral security is admitted (record, p. 30); and it was also admitted, that no mechanics' lien was claimed. (Record, p. 30.)

The Court, without any regard to the first and second questions raised, must decide, under the latter clause of the third question (page 30), that the plaintiff has no equity against the mortgage lien.

Why they admit (record, p. 30), that they hold a part of the mortgage lien — twenty thousand dollars of the bonds as collateral to their debt. They say that they are worth only two thousand dollars. Before they can claim against any other creditor they must sell and account for their collaterals. They claim no mechanics' lien. Dillon, Judge, in U. S. Court, Wind Engine Company *vs.* B., C. R. & M. Co. (4 Dillon, 583), held, that " no person shall be " entitled to a mechanics' lien who takes collateral security " on the same contract," (Code of Iowa, 2129), and those words are the whole of the section, and all that requires to be printed.

He also held, that where the vendor retained the title and did not record it, he had no mechanics' lien.

No court can be induced to give a party a lien against prior mortgages duly recorded (see record of agreed facts, p. 15, articles 7, 8 and 9 of agreed facts, the last in 1872, be-

fore this debt was contracted, in 1873.) When the creditor himself has taken a part of the mortgage securities for goods sold and delivered, for which, without a contract or statute, he would have no more lien in equity, under such circumstances than a stranger. Having parted with personal goods for an agreed price and taken the debtor's promissory note, secured by a mortgage, he cannot claim a special lien on the income of the property above his co-mortgagees. They furnished money to build the road and operate it. Hale, Ayer & Co. furnished material to build and operate the road, and take the same security as the lenders of money. They can have no better or prior lien on the income or property than their co-mortgagees.

Suppose a land owner mortgaged his farm and bought horses, seeds, tools and food, supplies for his farm, and the creditor parted with the chattels, without reserving a lien on them by agreement, and there was none by statute. Can any decision be found, or any reason for such a decision if made, that the vendor of these chattels had a prior equity over the mortgage, when the mortgage was made, under a law which made it notice to the vendor? How much more equity in these cases than the former?

GRANT & GRANT,
For Appellees.

fore this debt was contracted, in 1873.) When the creditor himself has taken a part of the mortgage securities for goods sold and delivered, for which, without a contract or statute, he would have no more lien in equity, under such circumstances than a stranger. Having parted with personal goods for an agreed price and taken the debtor's promissory note, secured by a mortgage, he cannot claim a special lien on the income of the property above his co-mortgagees. They furnished money to build the road and operate it. Hale, Ayer & Co. furnished material to build and operate the road, and take the same security as the lenders of money. They can have no better or prior lien on the income or property than their co-mortgagees.

Suppose a land owner mortgaged his farm and bought horses, seeds, tools and food, supplies for his farm, and the creditor parted with the chattels, without reserving a lien on them by agreement, and there was none by statute. Can any decision be found, or any reason for such a decision if made, that the vendor of these chattels had a prior equity over the mortgage, when the mortgage was made, under a law which made it notice to the vendor? How much more equity in these cases than the former?

GRANT & GRANT,
For Appellees.